



206

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The conclusion can be denied only some new matter, the conclusion cannot be denied by issue for if the major & minor are true the conclusion is irresistible without some new matter. Ex the deft pleads a release, &c. the Deft can at com law deny the conclusion only by special plea, this release then must be pleaded specially & this special plea presents a new syllogism whh may be stated thus If he upon whom land I have entered releases the trespass &c,

The Plf has released therefore &c, In pleading as said before the major is not expressed, The Plf then must deny either the first proposition or the second or the conclusion if he denies the major he demurs. if the second he pleads non est fact: if the conclusion he must alledge new matter as that the release was obtained by fraud & this again presents a new syllogism,

The sole object of all pleading is to simplify the controversy by narrowing it to some single point,

The first stage of a suit is the writ, which is a mandatory letter directed to the sheriff issued to compel the appearance of the defendant. The commencement of the suit is the issuing of the writ, & tho' in Engl? the writ usually bears a fictitious date but the date may be denied, 3 Bl 273. 285. Comp 454. 7 TR 4. 1 Wils 147. 2 Barn 900. Carth 233.

In the practice of BR the original writ is dispensed with in most cases & the Plf files a bill counting upon a fictitious writ out of Chancery, in BR then the filing of the bill is the commencement of the suit. 1 Bac 41. 6 Co 48. 3 Barn 2323. Comp 454.

In Count we have none of this fiction here there must always be a writ, and the writ and the dec^r issue together,

The first stage of the pleading is the count or dec^r this count or dec^r is called an amplification of the writ containing the particulars which show the right of action

3 Bl 293
Carth 334.
Salk 219.
4 Bac 8.
Lawes 1:2.

Definitions &c

By the pleadings however is sometimes meant only the allegations which follow the decⁿ
4 Bac l. 6. Savers l. 2.

The first stage of the proceedings which follow the dec^r a count is the deft's plea and the pleas on the part of the deft are of 2 kinds 1st dilatory pleas. 2^d pleas to the action, or pleas in bar, which two mean the same thing, 3 Bl 299. 301.
4 Bac l. 6.

Dilatory pleas are such as tend to delay the plf's remedy by questioning the mode in which the plf seeks his remedy & not the Plf's right of action. It is said that a plea to the plf's remedy is to 3 Bl 301 delay the Plf's suit but it defeats the Plf's suit & delays only his remedy by forcing him to bring a new action, or to amend his writ or declaration.

Dilatory pleas are of three kinds are first pleas to the jurisdiction, 2^d to 3 Bl 301. the disability of the Plf. 3^d a plea Bac tit pleas in abatement, the third kind has several 1 Fidd 572. subdivisions, Savers 37.

(22)

Definitions & genl observations,
All dilatory pleas are frequently called
pleas in abatement. this is not strictly
correct. 3 BL 302 (ch. n).

Pleas in bar are answers to the merits of
the Plf's demand they deny that the Plf
has any right of action and the cause
of action may be denied by pleading in
3 BL 303: 5: 6. three ways. 1st by denying the Plf's allega-
Lanc 37: 8. tions or 2nd by confessing and avoiding
115. 130: 140. those allegations or 3rd by estoppel this
third mode neither confesses nor denies the
Plf's allegation it merely shows that the
Plf has no right to make his allegations
and its effect is the same as denying the
allegations of the Plf.

4 Bac 54
3 BL 305.

These pleas to the action are twofold
the genl issue & a special plea in bar,
both these are pleas in bar, the one genl
& the other special. —

The cause of action may also be denied by a demurrer tho' this is not strictly a denial of his right of action by pleading the demurrer denies the maja propr & it is not called a plea because it alleges no matter of fact & denies none, its office is to deny the legal sufficiency of the facts stated in the decⁿ. a Demurrer is called an excuse for not pleading & the form of the demurrer shows the propriety of thus calling it. 4 Bac 129. 130. Co Litt 72 (a). 5 Elliot 132.

In all pleadings there are two requisites 1st that the facts alleged be suff^t in law. 2^d that the facts be stated in forms of law. an omission of these or either of them is a fault and good cause of demurrer. the first is a defect in substance the latter in form only. Hob 164. Comp 683.

As a genl it is only necessary for a pleader to state facts & as the case may be a conclusion from them i.e. facts as they actually exist or as they exist by fiction & presumption of law, - and this conclusion from a facts is to be stated as a fact,

(24)

Genl Rules

It follows then that the pleader need not state matter of law, but only matter of fact. 5 OR 70. Doug 159. Lawes 46.

1 Lev 164
Cro Eq 13
Stra 793
Lawes 49
Lo Ray 157
2 Root 74.

It is never suffo for a pleader to state the mere evidence of a fact. the fact itself must be substantively alledged. Ex in indeb ap: the indebtedness is only evidence of a promissit & therefore the indebtedness is not all whh the pleader must state he must state as a fact a promise & the indebtedness is suff^e evidence of the promise,

Salk 128.
Stra 224.
2 CR 63(a)
Hyd B 196.
Lo Raym 538.
4 ellap 451.

There is one instance in whh in a prom^t no exp^{res} promise need be alledged viz in a prom^t on a bill of exchange or promissory note ag^t the drawer or promisor

But even here the practice is universal to state a substantive promise & I G thinks it w^d be hazardous to omit it,

Again pleading by way of argument & recital is improper but this rule applies merely to material traversable facts these must be directly alleged, & in Trespass. if the Plf sh^d declare whereas the Deft beat, enters onto to Plf's land &c this w^d be bad for the traverse of it w^d amt only to this that whereas I did not enter &c,

4 Bac 22
Co Litt 303
1 Saund 274
Lam 49.
134
7 JR 458

But these words 'for this that' &c are suff^{ly} direct, also the word 'altho' &c is suff^{ly} direct so "because" is held suff^{ly} 2 B & P 447. 1 East 263 or 203. 2 Ch Pl 197. 1 Saund 117 (n 147). Selw 121.

So again the words 'scilicet, videlicet' &c are held to be suff^{ly} direct & the genl issue denies the goods or sum laid under the videlicet. (Lb/)

(26)

Genl Rules

In genl too the time & place of material allegations must be alledged tho' the true day & place need not in genl be stated
Comyn & pl c 69. Cro J 183. Cro E 88.

For time & place are supposed to add to the certainty of the pleading, with regard to place the reason is that formerly every material fact was to be tried by a jury *de viceneto*.

Each party admits so much of his adversaries material allegations as he does not deny
Salk 91. 1 Wils 388. 4 Bac 2, 73.

Each party's pleading is to be taken in construction most strongly agt. himself.
106 234. Co Litt 303. Salk 186. 2 HBL 530.
4 Bac 2,

Lams 49
(prob).

Number quantity & price need not be stated truly except when a mistake in any of these particulars w^d occasion a variance from a record, bond, or written agreement, or express contract,

Surplusage does not vitiate any pleading
 but repugnancy will vitiate any pleading so Litt 303
 if this repugnancy is on a point material 4 Co 42,
 it is a defect in substance secus if on 4 Bnc 2
 a point immaterial 94.

2 East 393
 Carth 288.9
 Savers 64.5
 170.

It is said that every thing must be pleaded
 according to its legal effect so on a writ
 in assumpsit the latter must plead so Litt 108 b
 it is a release, so if writ for life make 2204
 a grant to the executor of his estate in assumpsit
 this grant must be pleaded as a writ 50.
 Summ. de again 209. now to me a liquid 407.
 debtor must be pleaded as an account so Bnc 400.
 Again if a bill of exchange is drawn by a
 fictitious payee & comes into the hands of 1 H Bc 313
 an indorsee to indorsement from the 564.
 fictitious name the indorsee may declare 35 R 182,
 on it as a bill payable to bearer 436.
 2 H Bc 157.
 234.

But tho the rule is laid down that every
 thing must be pleaded according to legal
 effect yet it is true that the major 2.4 Bc 11.
 pleaded as they in fact are - then the
 it will in them their legal effect, but
 the former mode is altogether the most dangerous
 like,

Genl Rules

That and already upon the record
 need not be formally alleged in
 20 Litt 303 there for estimating 100 acres of corn
 7 Co 70. described as a field the value need not
 11 Co 25a be alleged.

9 Co 54

2 Ch R 77.

Again reciproc circumstance, implied in
 facts which are stated need not be
 themselves expressly alleged, ex feoffment
implying livery & seizin imply grant of
 reversion implies attornment, not ex the
 grant is no grant without attornment. 11 Ch 41
 20 Litt 303 (H) 2 and 25 Co. note 13. 2 and 22 Ch 7.
 2 Ch Pl 214. - With respect to feoffment
 &c. Butler observes, that when feoffment
 is alleged with livery of seizin a
verdict issues the omitted but there is
 clearly no need of verdict.

of plea which blends matter of fact & matter of law so that they cannot be separated is so that the matter of fact cannot be distinctly traversed is bad. 9 Co 25 (a) 2 Collo 55. Lang 138 4 Bac 68 (a) Ex of being false imprisonment as to B & B pleads that he was kept in such a count & in that character had a right to imprison so this is to be bad. He sh^d have pleaded the fact which gave him the right, as that he had received it.

What is admitted by both parties in the pleading cannot be contradicted by themselves as to the same & a verdict contradicting such admitted facts would be bad. 4 Bac 2 Collo 5 Ball 289. Lang 48.

A good estate, in fee simple may be pleaded in a good form, i.e. it may be alleged that the party was seized in fee without stating the time & manner of acquiring it.

But all estates less than fee simple must be specially pleaded, i.e. the commencement of the estate & the mode of acquiring it must be distinctly alleged, but this rule does not in good hold in declarations & but it holds in all the subsequent pleadings. Co Litt 303 (14). Cro C 938. 3 Wils 72, 20 Raim 331. 333: 4. Balk 562.

It does not hold in dec^{rs} the estate is stated mere as inducement

Genl Rules

For an estate in fee simple may be acquired by matter of mere wrong which is a mere matter of fact but particular estates cannot be acquired except by some act or compact which involves matter of law. which must be presented to the Ct to judge of its sufficiency.

The reason why the rule does not in genl apply to declarations for the estate of the Plf in the dec^r is genlly stated merely by way of inducement but in the subsequent pleadings an estate is never alleged by way of inducement.

Immaterial averments as contradistinguished from important must often be proved

- 2 Rik 104 immaterial averments have more particular
 2 Rik 104 on averments when a single averment is to be suff^t
 104 (a) It was formerly said that such averments
 2 Rik 106 must always be proved but now they need
 104 (a) 12 not be proved except where the not proving
 207 a 124 it will create a variance from rec^ds
 2 East 497 deeds & express contracts
 3 Rik 143 as to what says if the whole averment could
 Bull 7.5 be struck out without injury the averment is
 104 5021 immaterial.
 2 Rik 1506.13 Ex action agt shff by landlord for taking all
 the goods of the tenant without leaving suff^t for
 a year's rent, and the dec^r alleged that there
 was a lease on which rent was reserved
quarterly where the rent was actually reserved

yearly or semiannually. the C- held that the
Plf must fail for this agreement might
have been made orally yet having been made
particularly & varying from a written contract
it must have been proved

If the pleading wants from a cmt, time
or place it is in genl aided by the adverse
party's pleading one instead of specially
denying. A duplicity is aided by
pleading one, so the omission of the perfect
in deeds.

7 Co 256.
5 Co 120.
Co Litt 303.
earth 66.
SulR 579.
4 Bur 2.

But when the pleadings are ill in substance
nothing can aid it,

A party need not allege more than
will amt prima facie to a sufft cause
of action or to a sufft defence, ie he
need not anticipate the answers & the
defences of the other side. But this rule
does not hold of pleas in abatement
because these are not favoured in law.
Some of estoppel.

post
2 Wils 300
2 Raym 400
1 Salk 299
2 Burr 1037

Genl Rules

If the pleading on one side expressly
 alledge a material fact omitted by the
 other this pleading avers the omission,
 & it is not trespass not B for taking &
 carrying away an iron hook without alledging
 that it was taken from the Pl's possession.
 104. 184. Comyn Dig 16. 85
 16. 85 the Def't pleaded that either he took the
 hook from the person of the Pl't. yet he
 137. here the omission in the de't was held to have been
 5 Bnc 107 cured by the plea in bar.

3 BL 309. New matter alledged in any stage of the
 1 Saund 103 Pleadings after the de't must conclude
 58. with a verification, for the conclusion
 Comp 575. is the only mode of Reading the pleadings
 2 Ban 772. open to an answer.

any matter whatever pleaded in avoidance
 & not in denial is new matter

In every part of the pleadings the opposite
 2 BL 309. 10 party may deny, confit & avoid a demand.
 1 Saund 103 until a proper issue is tendered. hence,
 (h. l.) arises the reason of the above rule for the
 145. 9 opposite party having the right to these
 150. 158. three modes cannot have it unless the previous
 plea concludes with a verification.

Pleadings (No. 2).

If this a deft pleads a special plea in bar the plea must conclude with a verification, if the application contains new matter & since it is the same.

Each party in each successive stage of his pleadings, ^{must} fortify his preceding allegations in the 2nd 3rd & 4th stages otherwise it will be a departure 3 B. 3. 2. If in a replication to a plea in bar the 2nd Raym. 14. If must allege facts which will go to support his declaration & also answer Bull. 17 the plea in bar. If the same are not 4 B. 6. so the parties might change their ground four.

When pleadings are submitted to the court 4 B. 149. 200 it is that what is to be recorded 10 Ann. 20. on the whole record & dec^r is it in 10 Co. 129. substance & the plea in bar is ill if the 133. 1. If demands the deft will have judgment for 2 Co. 110. jury will be ag^t that party in whose 4 B. 7. pleadings there is the first substantial defect.

Declaration

The term decⁿ & count mean in some instances the same thing & in other not, when the Pl^t declares in only one cause of action & makes but one statement of that cause of action, decⁿ & count are synonymous, but when he declares in two causes of action or makes more than one statement of the same cause of action each of these statements is called a count & the whole together a decⁿ.

17th 179. The decⁿ is called the foundation of the
 4th 199. suit hence it must contain all that is
 4th 211. essential to the pl^t's right of action,
 same 61. If then the decⁿ tho' otherwise suff^t discov-
 2d June 179. ering fact will show that at the com-
 1st 145. mencement of the suit he had no cause of
 20 525. action his decⁿ will be adjudged insuff^t.
 20 574. For verdict was not in such case one the
 3 136 273. defect. Ex. In debt on bond it appears
 Comp 454. on the face of the writ that the suit was
 75 R 4. commenced before the right of action accrued.
 Doug 61.

So the omission of any thing in the
 decⁿ which is of the substance of the action
 4 R 28. is an incurable defect. the gist of
 5th 305. the action is defined to be that which
 2 Bl 395. will the Pl^t has no cause of action
 Doug 658. or as Jst says the gist is that which
 4 R 472. constitutes a cause of action -
 vide arrest of judgment.

(Secⁿ. Its requisites)

Ex If in trover the If should omit to state a
concession this is a radical defect, so if in
assumpsit or a price promise the If states no
consideration or if upon a condition precedent
must be performed the performance is not
alleged these would be incurable defects,

Ex Holder vs Indorser & no notice alleged
Luskton & disjunct the defect is incurable -
see rule 1 Day

73 R 645 12
15 R 645
East 2038.
619.
Comyn &
p 151.
1 Ann 319. 2

But when the Ifs right of action is qualified by a
condition subsequent he is not bound to pl^y it
take any notice of it for this is more matter
of defence this now goes to the creation
of a right of action It is merely a dispensation
& its object is to defeat a right of action,

Comyn
7 Co 10: 11.
15 R 631.
154 R 254
254 R 574

so where the covenants are independent the If
is not bound to allege performance on his part
even where the covenants are dependent.

crof 684
5 Co 10.
Com 205.
2 ell 2329.
1 Port 357.
25 R 240.
466 15.

Certainty in declarations,
 even deeds must contain certainty. is the
 5 Co 34. moments must be certain. certainty how many
 4 Ban 2456 propensity. this is necessary to enable the deft
 5 Ban 272 to discover what he is testimony that a,
 1 Day 515 renew you may be framed - especially that
 the adgt might be framed in law is another
 action sh^d be lost for the same cause.

5 Co Litt 303 (a) this rule concerning certainty extends to parties,
 5 Co 35. time, place, & subject matter

5 Co 618.

1 Vent 272

5 Co 1. 97

2 Sand 74 no greater certainty is required in
 5 Co 34 describing the subject matter than the subject
 5 Co 517 with conveniently admit of. "how must
 5 Co 518. however be no ambiguity in the terms used.
 5 Co 37.

On this subject no very definite rule can be
 given. In town the words were 'a certain ship &
 'sails' & this was held sufft certain tho' in
determin it w^d be otherwise. "7 pines & linnus"
 was held insufft in town so 'a pheasant & corn'
 & 'a library of books' was held sufft.
 "Some fish" was held insufft.

The law does not require as much certainty
 in matter of inducement & aggravation as in
 that which constitutes the fact of the action
 then are not traversable *ex tunc: for both have "stating goods"*
 By inducement in pleading is meant matter *vanes 712*
 introductory to the principal fact - matter, 118.
 which is necessary to explain or introduce the
 principal fact.

Matter of aggravation is that which is intro-
 duced to show the enormity of the principal
 act.

Declaration miscellaneous,

75 N 531 If then one declares in express or a
 promise required by the St. L. rules to be
 in writing & the Court declines to the
 125512 dec^t the demand admits the promise
 falling to be in writing for no evidence can
 11011540 be introduced under the demand of the
 Conf 289 fact

of dec^t may be done in special. all the
 Court counts in return it make a real
 dec^t but where the term of a contract
 is set forth the dec^t is special

A dec^t on the penal part of a bond
 is one but a dec^t on the condition
 of a penal bond is special. Electrons
 11011540 11011540, or page 14. 4 Dec 1.

1009044 If per declining on a dec^t is not bound
 to set forth more of it than is necessary
 to entitle him to his action, & if there
 is any thing in the dec^t to avail
 the def^t the def^t or one may plead
 it — to of other agreements.

A decision in regard to the unusual
 among the same purpose as the art
historical

201 R02
 201 R02
 201 R02

Joinder of Plffs.

When two or more persons are jointly interested in the right to be asserted by action, then
 5 Co 114 man & regularly must join as Plffs for a
 14th violation of it & they are the same rule
 104 whether the action is in tort or in contract
 52 K 551. If then there are two or more pl obliges
 183 or it promises, they must join
 241 ff which was the rule as to pl until saying
 in Exchment, their interest is joint, but
 2 East 57 in the late cases it has been held that
 61. pl tenants, tenants in common & coparceners
 2 Ains 169 may all join in a case at their election.
 One rule has always been that in Court
 It was formerly held that pl tenants must join &
 tenants in com must sever.

On the other hand where the right to
 be asserted is in one person only another
 cannot join him in an action for
 asserting it. & in this case advantage
 can be taken of the misjoinder under
 the joint issue

In actions by Exors as such all who are named in the will must join even tho one has refused the trust & then the Exor who refused may be summoned & served, 7ll in Exor 440. Salk 3. 9 Co 37.
1 Saund 291 qf.

The omission of one Exor is pleadable only in abatement. 1 Saund 291 qf.

II. If the several rights of two or more persons are violated by one of the same, 2 Co 572 act they cannot join in an action for 4 Bac 10. this violation of their rights. Ex. 42 Bull 105. say B & C are both thieves, B & C cannot 2 Saund 215. join for no joint right is invaded, 4 Bac 11. 2 Will 427.

If of two joint obligors, covenantors, or promisors, one dies the entire right of action survives to the survivor & the Exor of the deceased cannot join for the joint accrecondi vests the whole remedy in the survivor, - if the contract is with the persons severally & then only one survivor each must sue alone & on the death of one the Exor of the decd has a right of action, (in some effect the contract)

Joinder of Defs

When the cause of action arose out of the
 it not a joint default of the 2 men, then
 may be joined as defts & if the contract is
 a joint then must be joined for if one is
 shed alone then is a variance between the
 dect & the contract. But if the join is
 committing a trespass then may be sued
 jointly or severally. Latch 122, 146.
 Bulet 25. 2 Bl 117.

Again if the join is in hiring a libel
 then may be sued jointly or severally.
 2 Ann 211. 2 R 124

But they cannot be joined as defts for
 distinct wrongs committed by each of them
 severally. therefore if A & B did at the
 same place & time utter the same words of
 C, could not join them both in slander
 the words of A are not the words of B.
 Bull of P.D. 5. & Bulet. Term 513.
 Cro 674. Cap D 104.

So if one is injured by the several acts
 of two done at different times, these two
 cannot be joined as defts for these acts.
 Id.

If two or more persons join & bind themselves jointly by a contract they must all be joined. But if they bind themselves jointly & severally all may be sued. Further a each may be sued separately. 21 Em 94
 Walk 343
 3 B & C 657

But in case of a joint & several contract be three, two cannot be sued jointly with the third for the contract must be treated as wholly joint or wholly several, 26 Gr 26.
 35 R 782
 29 Gr 29.
 3 B & C 698.

And if two or more persons bind themselves by one contract not expressing it to be joint or several, the contract is merely joint. 2 Cr 31. Ch B 175. 5 B & M 261.
 1 H B L 230.

If two persons bind themselves jointly by a bond & one dies the Ex^r of the dec^d is not liable at all at law. East 400.
 But if they bind themselves jointly & severally the Ex^r of the dec^d may be sued alone but the Ex^r & the survivor cannot be sued jointly.

Summary. Where an action is brought at law, none
 who are not parties to the action, need not be joined. & yet such, have
 been accepted as trustees, —
 Conn. 4.
 Abate 10

Joinder of actions,

✓ Any number of causes of action of the same nature & between the same parties can be joined in the same decⁿ provided Com^{rs} & the parties sue & are sued in each cause in the same right 4 Bac 11.

✓ Each cause of action must however be laid in the same decⁿ in the same county

✓ causes of action of the same nature are those which require at C^t the same, judgt at C^t in civil actions, there are two judgt^s at C^t where the cause of action is such that it must be laid in et armis & contra faciem the party, a captator but where the action sounds in contract or in case of delict the judgt^s is misericordia, 5 Bac 141. 1 Bac 30. Long 652. 2 Wils 310. 1 R 276. 1 Wils 252. 1 Wils 310.

✓ But where the judgt^s is the same it is not universally true tho' generally true that the causes may be joined in the same decⁿ

✓ But if several causes of action require the same judgt^s & the same seal office they may be joined, & this rule is universally true, provided the parties sue & are sued in the same capacity, - 1 Wils 252. 1 R 276.

406244
413ac12

It has been made a question whether
trespass & ejectment are the same so as that
they may be joined in the same decⁿ.
I think they cannot be joined for the
nominal p^{ty} is on the record the p^{ty} & if
the l^{or} of the p^{ty} sues with ejectment for
a trespass on the record there appear to be
two p^{ties} in one decⁿ.

Long 552. Slander malicious prosecution, trover &c
Comp 230. may be joined in one decⁿ in diff^t counts.

But when the p^{ty} is the same, tho' the p^{ty} is
joined in diff^t counts, the actions may
be joined by debt on bond & debt on
simple contract - again debt on simple
contract & detinue. Cr & 20. 310. 1 Keb 147
Mentz 306. 4 Bac 111

And debt on bond & debt on simple contract

Pleadings etc.

Joinder of actions,

✓ But diff. causes of action if the same nature cannot be joined in the same suit if the causes accrue in diff. capacities to the same person, for the diff. capacities make them diff. persons in legal contemplation. Ex. A's. for money and A. by Ex. A. as Ex. B. for the same action by Ex. B. as an individual, the misjoinder in this case is called a misjoinder of counts. (~~not of actions~~)

Lalk 10.
3 R 659
1 R 419
4 R 280
2 R 477
Nils 171
Stra 171

✓ But A's. for money had to be for the use of the Ex. A. or Ex. B. for the use of the testator may be joined for the money won't will be split.

3 R 659
3 East 104

✓ Neither can a deft. be sued in the same suit on two causes of action when he is sued in diff. capacities,

4 R 347

✓ Causes of action of diff. nature, can never be joined, where the parties are diff. the causes of action can never be joined, where one cause is tort & the other contract, then cannot one be joined and the other

Lalk 10
1 B & C 30.
1 Vent 306
Ran 213.
2 B. M. 114
2 W. 310
Curt 113.
2 W. 31.
5 W. 41.

Sett & account can not be joined &
 4 Bac 11 indeed account is so peculiarly an action
 1 Bac 11 that it cannot be joined with any
 1 Mod 42 thing else,

Rescript

¶ When the judgt and real issue are the same in both causes of action they may be joined.

¶ If the real diff^t causes of action may be joined when the judgt is the same tho' the real issues are diff^t (the exceptions to this rule are very numerous)

¶ Where the judgts are diff^t the causes of action can never be joined

Said 10 & When two causes of action are wrongly
 1000 joined the misjoinder is called the
 4 Bac 11 misjoinder of actions & this misjoinder
 1 H Bl 103 is always fatal, even after verdict, for
 1000 there can be but one final judgt in one
 action if then you have one count
 requiring a misrecoridia & one a
 capiatu you must have two judgts

✓ Duplicity in a decⁿ & misjoinder are
very diff^t things, a misjoinder consists
in improperly joining two or more distinct
causes of action in one decⁿ in diff^t
counts. to assert diff^t substantive rights—

✓ But duplicity in a decⁿ consists in
joining in one count diff^t causes of
action to enforce one entire right of
recovery.

✓ The effect of duplicity & misjoinder is
entirely diff^t, duplicity can be taken
advantage of only by special demurrer,

✓ If decⁿ in trespass for breaking Rfs house & beating
his servants, perjured to is good, this is no
misjoinder. For the breaking & beating are one
continued trespass & the beating is laid merely
for aggravation & so in this case the decⁿ is
w^o b^e good if the perjury were omitted the
then the consequential damages 2^d not
recovered

Carth 113
Stra 43
202
2 Wils 311
3 Wils 20
15 R 242
2 R 167
14 R 55
20 R 202

Where several actions are between the same parties & these might be joined on the deft's motion the Ct will consolidate these several dec^s into one decⁿ. This however is at the discretion of the Ct the object is to save costs & the Plf is subjected to the costs of the consolidation.

Where there is a misjoinder the Ct will allow the Plf on payment of costs to amend his decⁿ by striking out one count. and now it is held that the Plf may enter a notice of prosecution on the bad count even after demand for the misjoinder. (42 R 347 360. 4 All 108. 1 Lawd 885 (n. contra) 1 B & P 157. 2 Do 77.

In Conn! the difference of judgments do not exist. still the rules concerning misjoinder are the same here as in Engl?

The dec^y must come with the original
 writ. the writ gives a name to the action Ho 110.
 if the writ sounds in trespass & the dec^y Ld 14
 in case the dec^y is bad, for trifling Cro 325.
 differences the modern english practice says 4 Bac 113.
 not allow the def^t to take advantage

those facts which constitute the gist of the case
 action must be express & particular Bac 110.
 alleged not by way of recital or inference Pl 115.
 Co Litt 303.
 according to some the non observance of this rule
 is fatal after verdict but in 2 All 581 1 All 96
 it is determined that a verdict can be
 such a defect, & I think this decision
 correct for the fault is not that there 2 P 286
 are not sufficient facts stated but that they
 are alleged in an informal manner 2 All 581
 & I think that this defect at the
 present day is to be taken advantage of
 only by special demurrer

Where then is a repugnant averment
 12 Cr 194 under a solicitor to the repugnancy is
 1 Hums 117. aided on your demand a after verdict,
 286.

The rule that all material facts must
 be positively alleged, applies to such
 facts only as are the subjects of a
 special traverse, however material the
 facts may be. Ex the consid^r in a pump.
 4 Cr 106. is very material yet it is never alleged
 Cro Erol. directly but always under a whereas.
 Comyns. for ~~as~~ the consid^r cannot be specially
 11 Q 11:14 traversed, so again in traverse the fact
 4 Co 166. poss^r a talent is never positively alleged
 7 where science is of the fact & the action
 & it is never alleged positively for
 this fact cannot be specially traversed

2p 177 Again the rule above does not hold
 8 Cr 40 of matter of inducement for this can
 4 Bac 13:14 now be the subject of a special
 1 Ann 71:2 traverse,
 118

✓ But when any material fact may
by the rules of pleading be specially
traversed the fact must be alleged
in direct & positive terms, & in case
where there is a conditional precedent to
performance, must be directly alleged
on it is the subject of a special traverse
& set in dispute. I think that a
conditional precedent may be alleged under
a whereas

✓ If the debt is good in part & bad in part in 104
part & the whole is demanded to the 406170
Plf may recover on that part which is 1050115.
good in law if that part containing 1050115.
a sufficient cause of action, ex. trans. for 1050115.
two articles & are sufficiently described & the 1050115.
other not. If the Plf sues on the 2050115.
bonds in two counts and it appears on coming
the debt that one is not payable & 1050115.
the whole is demanded to the Plf, 1050115.
may recover on the good count. & 1050115.
is a good rule.

✓ But in such case if the debt leads
to the action & the jury find entire 1050115.
damages & a full verdict the verdict 1050115.
will be set aside the judge suspected & 1050115.
a venire de novo awarded, the Ct cannot 1050115.
know how much was alleged in the jury on 1050115.
the bad count. 1050115.
1050115.

But if the amt to wh^{ch} the Pl^f is
 486/78. entitled on the good count is ascertained
 120/174. on the record the Pl^f can have judgment
 in two counts & the jury return a
 verdict of \$1000 - it appears from the record
 that he is not due the C^t ^{much as giving of the remaining count.} ~~has~~ ^{means} to determine how
 2. ~~much~~ ^{much} in any case when there are two
 120 C 318. counts the one bad & the other good &
 1 Bu 187. the jury give several damages in each
 count the Pl^f can have judgment on the
 amt applied on the good count. the
 amount the bad count the judgment will be
 arrested,

✓ But if in a case for instance where
 14. words are alleged in one count & some
 of the words are actionable & some not
 & the jury give entire damages judgment
 cannot be arrested for the C^t will
 intend that the words were spoken
 at one time & that the damages were
 applied on for the words which were
 actionable -

2. But in criminal proceedings where some
 unimportant counts are good & some bad & a general
 verdict of guilty is given by the jury
 judgment is never arrested,

Dilatory Pleas.

By it. An no dilatory plea is admitted where affidavit made of its truth or of some collateral fact which may induce the Ct to believe it true. We have in Court no such rule. 3 BL 302. 2 Will. 51. 4 Bac 35 N. 51.

This stat can apply only to extrinsic facts & not to facts appearing on the face of the dect^{re}.

The first class of dilatory pleas are pleas to the jurisdiction. 1 Inst. 154. 3 BL 301. Jack 544. 4 Bac 30.

A Ct of limited jurisdiction is one whose jurisdiction extends only to contracts to which action within local limits.

When any ct has not jurisdiction of the subject
 matter of the suit they is a good cause of
 pleading to the jurisdⁿ of the ct. but in this
 case the def^t need not plead in abatement
 indeed it is the duty of the ct to dismiss the
 cause on discovering this want of jurisdⁿ.
 1 Vent 337. East. 352, 10 Co. 68. 84.

If then a real action is not in B R if the
 def^t sh^d not plead in abatement or motion
 by the def^t at any time the ct will dismiss
 it.

The subject matter is the cause of action, &
 if the ct not having this species of jurisdⁿ
 sh^d render judgment the judgment w^d be utterly
 void. Ex. of just of peace in Conn^t then
 a cause of \$100. there is a want of jurisdⁿ of
 the subject matter.

Again when an action is local it is a
 good defence that the cause of action
 arose in another state or county

Rules to the jurisdiction

1 ABL 140. Actions are always local where the
 2 BLK 1058. plaintiff acts in unus, for the process of one
 Stra 012. state cannot run into another
 Comp 166.

175. 181.

1. 4 BL 106. 2. If a crime prosecuted, are local for
 the crime case, if an state cannot be
 taken notice of in another state, a
 crime committed here cannot be a crime
 as in other state.

But personal actions but in several
 state are not at all local as regards
 diff^t counties of the same state, but
 crime prosecutions are local as regards
 diff^t counties.

2 BLK 1058. If D. When the subject is local tho' the
 42 R 503. thing to be recovered is not set the
 Stra 046. action is local. Ex, trespass quare clausum
 & t. clausum is local as between
 diff^t counties as well as between diff^t states.

and debt or even cont agt the assignee
 of a lease is local, because the contract 2 Inst 574.
 of the assignee is attached to the land. Co Litt 183.

1 Saund 24. (17)

7 Co 2 p.

Collet 194.

But debt or cont broken agt the assignee
 when is not local the contract is
 personal.

A plea to the jurisdiction is regularly
 the first in the order of pleading on the
 part of the deft. for unless the deft,
 pleads this first he waives the plea. for
 by submitting to the ct any other
 defence tacitly acknowledges the ct's
 jurisdⁿ. this applies in all cases when
 the ct can waive jurisdⁿ by the consent
 of the deft.

Co Litt 127 b

4 b 104

4 Bae 28. 35

A plea to the jurisdⁿ must be signed
 by the deft himself & not by atty.
 (does in Court)

Collet 146

4 Bae 35.

same 31.

But the exception to the jurisdⁿ cannot
 be waived when the ct has not cognizance
 of the subject matter.

his plea concludes to the cognizance
 of the Ct. of Pl. 303. 5 cl. 1. 145 d. back 303.
 back 298. Same 300.

When this plea is maintained the mag-
 istrate holds the Ct. can decide whether
 it has jurisdiction or not, & now I think
 the Ct. cannot once pronounce award
 costs.

In case if the Ct. dismiss the cause on
 plea in abatement then award costs
 if they dismiss it on motion of officer
 they do not. There seems to be no reason
 for this distinction.

Disability of the Plf.

✓ The object of this plea is to defeat the suit by showing that the Plf has no right to maintain an action, & that the Plf is an outlaw. An outlaw is as liable to be sued as any other man. 1 Sidr 60. 3 Bac 761.

1 Bac 2
3 Bac 761:2
Litt 5197
Co Litt 128a

Outlawry in the Plf. is sometimes a good plea in bar. if the cause of the outlawry was a felony it is a good plea in bar but where the cause is a minor offence it is only a plea in abatement

5 Co 109
7 Co 29.
1 Ch R 473.
1 Bac 14.
Lewy 38. 104.

2^d Excommunication, this disables the party to sue until he has obtained absolution, 1 Bac 3. 2 Bac 319. Co Litt 133:4. 5 Co 03:46.

3^d Alienage, this is sometimes a good plea in abatement. vide 4 R 305. 1 Bac 278 alien est. to find who are aliens by & all persons born in a foreign foreign state, are aliens. But the Stat law has modified this rule. Alienage is not in all cases a disability but an alien friend if not naturalized or made a denizen cannot maintain an action real or mixed for he can not hold real property. but he can maintain a personal action

3 BCL 300:72
3 BCL 934
2 BCL 162
Stat 1812. 1 BCL 371:2. 2 BCL 434

But the rule that no alien can hold real property is modified in some of the states and they are called tenants in common.

Conor is noted with power to naturalize aliens.

The children of native citizens who have been abroad have all the rights of native born citizens. Kent & Vol 2

U.S. St. Att'y.
C. C. C. C. C. C.
alien

The children of persons naturalized born after naturalization are possessed of all the rights of native born citizens.

The children of persons naturalized under age at the time of the naturalization & at that time residing in this country are entitled to all the rights of natural born citizens.

Proctor
dunlop
Poppo
isitt 24
1844

An alien trader may hold a term for years by lease & if forfeited at this time he may sue to recover it, (i.e. a term for years in a house not in land)

An alien enemy can maintain no action at all here, therefore a prisoner of war can maintain no action

Str 1032

4 Bac 36.

1 B4P 163.

6 R 23.

49

Long 626. or

649.

Clark-In 36:7

But a suit may be maintained on a ransom bill given to an alien enemy but the suit cannot be commenced until the end of hostilities & when he does sue he must sue in a ct of admiralty.

6 R 23

Clark 37. or

Long 619. or 25

3 Bun 1734

1 B2 R 563.

An alien enemy residing here under a licence, safe conduct or protection from the government may maintain an action the very effect of such license is to place him under the protection of law.

Lo Rayn 282

the 1st 40.

1 B2 R 166.

Str 1032

Whether an alien enemy not thus protected can maintain actions in a representative capacity is in Eng^l doubtful, in the U.S it seems that such action could not be maintained,

6 R 142

613.

1 Bac 34.

an alien friend as Eir may have lease
 205a) & of course may maintain an action for
 1 Bu 14. such lease tho he could not hold such
 lease in his own right.

See 4th
 1st p
 2nd 1012. On the plea of alienage of P/f the ass,
 probandi always lies on the def.

3 BL 301 Popish recusancy, praemunire & attainder
 4 BL 380 of treason & felony are respectively
 disabilities to the maintaining of actions.

In 110 in Const it is provided that the
 effect of attainder of treason extends
 only to the life of the offender & not to
 his issue. Const 115 Art 3. 53.

Plea to the disability of Pfa.

That the Pfa is a feme covert is a good plea in abatement & only in abatement.

11k 443
Co Litt 132
3k 531
Cuth 124

Indeed it is a good plea that whatever might be pleaded by way of dilatory plea cannot be afterwards pleaded. some ex p. t. 1151

6
2k 161

If a feme sole having commenced a suit marries pendente lite her marriage may be pleaded to her disability.

1 Bl 310.
4 Bar 54

By an Act the husband in such case may suggest the marriage on the record & proceed with her.

Again that Pfa is an infant suing with guardian or next friend is a good plea in abatement.

3 Bl 301.
Co Litt 135 (4).
Cuth 123.

And if an action is brought by an infant & judgment goes for a defendant the judgment is at all times erroneous & a writ of error may be brought to reverse it. In 1803 it was held that if judgment was for the infant it was not erroneous. Trotter 441.

2 Saunders 213 (4).
Cro 54. 424
Cuth 123.
1 Rob 287.

But by 21 Jac 1 if judgment in such case is given on verdict for the infant it is not error unless the defendant pleaded to his disability & the rule by 24 Hen 6 is the same when judgment is given for the infant or conf. nil debet a non sum. inf.

2 Count Hinman v. Taylor,
Compt & Pl. 2
21 Saunders 213
Cro 50

Again it is a good dilatory plea that
 the Plf is not in spe. as a fictitious plf. &
 Compt & abat C. B. 17. Has the abat &
 1 Wils 302. 3 Rl 301. 1 Ch Pl 435. C. 1 N. P. 44.

2d might this plea go in bar. I think
 it might for if the Plf is not in existence
 there can be no cause of action in his favour.

In Equity the fiction cannot be objected to.

Pleadings (No 4).

Dilatory pleas,

Plea of this class is, pleas to the substance of the writ, or to the power of the Cf.

3 B & 301.

109.

115.

The third class. Pleas in abatement is, pleas to the substance of the writ, or to the power of the Cf. Co Litt 134 (f). 4 B & 35.

Pleas in abatement extend only to the writ, or to the count or debt, but this is not universally true.

3 B & 301.

1 B & 15.

115.

112.

3 B & 35.

354.

In the English practice the writ is distinct from the debt. It was in some cases that the writ is distinct from the debt, but in some cases the writ is distinct from the debt. The writ is here common to both writ & debt, the signing, recognition, entry paid & the facts of the writ only.

A plea which goes to the writ only is a plea in abatement.

1 Br 1647 If the deft is misnamed in the degt this
 3 Br 224 is a good plea in abatement & then only
 3 Br 301

cases 105

If the act varies from the degt this is a
 good plea in abatement.

Authy And if there is a variance between an
 count & instrument described in the degt & the
 instrument itself this variance is good
 cause of abatement.

Doctyl

But in Eng: the usual mode is to
 take advantage of this variance under
 the rule of law, or by moving over &
 demurring, but in count it is more usual to
 plead it in abatement.

In pleas in abatement the almost
 certainty & precision are required,
 Comyn Dig. Abat. i. 11. 3 Br 115. 5 Br 487
 1 Br 107. 2 Br 510. Cr. 112.

A plea in abatement must in genl
 give the Def a better writ. Le Raym 1178.
 Comyn 3 ab. i. 2. Cases 34. 103. 4. Doctyl,
 introduction. 21. This rule means that the
 plea must be so pleaded as to enable
 the Def to supply the defect in it or
 to avoid the mistake in a subsequent
 writ.

Diff^e causes of abatement.

These may be either intrinsic or extrinsic.

Collusion of the p^rty or d^rty is a good cause of abatement whether the misnomer is in the writ or return or both.

1 Chk 7.

3 B & 302

3 East 107

3 B & 224.

so by the English law the omission of the d^rty's addition is a good cause of abatement, & so it is here but our law collation of additions is now diff^e from the English law. the addition is required only in the writ not in the return.

3 B & 224

with 14.

collation

3 B & 371

As to place of abode it is suff^e to give his late or present place of abode.

But by the modern rule of practice, in Engl^d by which the c^t will not in their discretion grant issue of the writ for the purpose of enabling the d^rty to take advantage of the omission of his addition, this rule of practice cannot exist in this state.

1 Ch R 44.

James 97.

1 Chanc 318.

3 B & P 391.

West 337.

The Stat of additions does not extend to collusions real actions.

3 B & 613

It is the want of additions or even
 2 Inst 146. misnomer is not material in a statement
 1 Id 440. in a case of indictment for felony
 2 Co 114. But this rule is altered by the St of 45th
 4 Bac 31.

But where one is indicted for felony a
 1 Inst 146. plea in abatement for misnomer or want
 2 Co 170. of addition cannot avail the person any
 231. further than to occasion a short delay

By the St of additions a mistake in the
 deft's addition is cause of abatement.
 3 Bl 302. Comb 15. 22 Reg 1014.

In court the only addition required is
 his place of abode. Still where one is
 sued in an official or representative
 capacity this must be annexed to his
 name. but not by way of addition
 but for the sake of showing how his
 liability accrued. the official
 capacity is the inducement to his
 liability. 3 Bac 620. 2 Inst 14. Comb 301.
 302.

When an official character is annexed
 unnecessarily to the deft's name it is
 mere surplusage & even if there is a
 mistake it does not vitiate. Cro E 332.
 3 Bac 621.

The misnomer of one of the co-defts is no cause
for a plea in abatement by the one rightly
named for the deft misnamed may admit
himself to be rightly named & the other cannot
object.

If a writ abates as to one of several co-defts either
for misnomer it has been a question whether
the writ abates as to all or only as to the
deflt not rightly named. I think that
if it appears that the liability of the two
deflts was joint & only joint the abating
quoad one must abate it as to all but
if the liability is several it sh^d abate
only quoad the person misnamed & remain
good ag^t the rest.

In the plea of misnomer the deft must state such
that he ^{is & always} was known & called by such a
certain name ^{and that} at the time of the writ if any
& that he was not known & called by the
name mentioned in the writ and by
some of the precedents he must traverse
that he was never known or called by re.

It is not suff^t to say that the deft was
baptized by a suff^t name.

2d. If the left party in the commencement
 of his suit that he is sued by the name
 mentioned in the writ he destroys his own
 plea. If it is sued by the name of B & the
 plea commences and the said A sued by the
 name of C this is bad.

either ellis nomen as such can be excepted to only
 by plea in abatement. if he pleads to
 the action the left admits himself right
 named & raises the objection
 2d. If 207.

207.

If a person executes a specialty by a
 wrong name he must it is said be sued by
 that wrong name & just as if he executed
 by that wrong name & the right name
 must come under an alias. Stra 1210.

1 Buls? 216. 3 Bac 107. This undoubtedly is
 1st. 504, authorized. but I think it is better proper
 1st. 249, to sue him by his true name alleging
 that he executed & the deed in the
 name of J. K. In Court when a left
 name is altered as in the death of one's
 father if the same name the left is sued
 as if and as having executed the instrument
 by the name of J. K. just.

It is held by some of our highest authorities that a mistake in the Christian name either in the pleadings or in the execution of an instrument is fatal. But to this extent the rule is not now law. In the case of this of the action is on a parcel granted or sold a tract of land is in the writ a mistake in his Christian name the writ will state the same is true if a wrong surname were given.

But if a man executes a specialty by a wrong Christian name he may be sued by the name with which he executed it & if the Deft pleads in abatement the Plt may reply that he is known by the name by which he executed the bond as by the other name & the deed (the copy of it being proved) is conclusive upon the Deft.

The Defts must always be described in the writ by their proper names & no other description will supply the want of this. Co partners cannot be sued by the name of the firm without their proper names.

As to corporations the rule is diff: the
 Lachion must be sued by their corporate name &
 Pl. it is not suff: to name the members

when the deft is named in a writ
 he runs no hazard by answering the
 misnomer for if he is afterwards
 sued by his right name he can plead
 the former judgment in bar & say that he
 is the same person who was sued in the
 former suit.

Restor the misnomer - the Plf is also a
 good plea in abatement & the reply
 that Plf is known by the one name as
 well as by the other is good

But the additions of Plf are not valid
 in it & additions. 2 Plac. cor. 8. called 15.
 c. 40. In this country there is no
 use in making the Plf's additions need be men-
 tioned at all the Plf's name need not be
 stated except when the Plf was of the
 degree of knight. 2 Plac. cor. 134.

But in this state of the Plf's place of abode is misdescribed the writ may be abated, not so by the d., for in count the place of abode gives the Ct jurisdiction,

Coverture of a sole seft is good cause of abatement. Co Litt 132. 1 Sid 414. 4 Br 39.

But if a feme sole being seft marries per: lito this marriage is no cause of abatement. for by her own act &c

Co 323.

3 Br 111

Exp 328.

2d Raym 1525.

1 Br 4. 10.

If a feme covert sues alone as wife herf if her coverture she must plead it in abatement & if she pleads a good impediment she waives her privilege, and she must plead her plea in abatement. in person it cannot be signed by atty for consistently with her own plea she cannot appoint an atty. 2 Saund 204. 2 Br 1. 2 Ch Pl 415. 425.

Litt 14.

4 Br 2. 39.

But her husb? may appear in any stage of the proceedings and plead her coverture in bar & if judge is obtained he & she may join in a writ of error pro lis. for his marital right cannot be waived by her omission to plead, but the writ of error must be in the name of both husb & wife. 3 Br 10. 10.

3 Br 631.

5 Br 681.

Litt 400.

(71)

That two persons suing as hus. & wife or
Lans 105 two depts sued as such are not legally
so is good cause of abatement, but
this is not universally true for in
some cases a hus. de facto may or sued
with his reputed wife.

Comb 130.

473.

Practh

134 f (2).

(26).

And it is held by some that a hus.
de facto may sue with his reputed
wife but I do not believe this
(vide husb. and wife)

2 Litt 89.

135.

5 Co 53 (1).

3 Bl 417.

That the debt is wife and sued with
guardian is no cause of abatement.
but he must appear by guardian when
sued & if he is sued alone the Ct.,
will allow time for summoning his
guardian if he has one & if he has
no guardian the Ct. will appoint
a guardian ad litem.

20 J 640

4. tt 22

Vel 58.

2 Bac 218.

3 Do 149.

And it is always the interest of the
inf. that the wife appear by guardian
for otherwise the judge recovers and
the infant is erroneous & may be
reversed by writ of error coram vobis

Rule the same when a lunatic is sued
with his conservator, 21. 74.

3^d ground of abatement is death of
 plf or deft. at c & l if a sole plf or sole deft died the suit abated, *10 Co 134.*
 and if a final judgment sh^d be rendered for or against a sole plf or deft. the judgment sh^d be affirmed, *10 Co 134.*
 unless a writ of error is granted, *10 Co 134.*
 n^o lie to reverse it by the error in which
 this supposes the death to happen before
 judgment, *per: l^{re}. 10 Co 134: q. 1. R^um 59.*
 2 Dec 218.

And if a writ of error were brought alleging that the party ~~deceased~~ whom he was dead
 & the deft. sh^d return that he was alive
 he may himself appear & plead in nulli
 et in statu altho' the writ of error is
 of course up to the error be—

to by: i if one of several codef^s plf dies *per: 10 Co 134.*
 the suit abates except in personal actions, *per: 10 Co 134.*
 when one of the plf has been summoned &
 served & dies after service. In real actions
 there are no exceptions.

The principle is that in voluntarily joining
 the plf about a joint right but when one
 dies the joint right is gone.

But too if one of several persons die after
 Ruyon 703 instant & before joint rule the same jointed
 will be admitted.

But when one of several persons die the rule
 30th 24y does not relate the rule is merely
 And 5th suggested in the word.

When 116 If two persons be being joined do not
 apart any joint right & interest no right
 they hold under in their place one may be
 liable if the other not. Hence the rule
 may proceed out one alone on the death
 of the other.

But now by year 5th & 11y 12m 3rd the inconve-
 nience arising from death of parties is much
 removed & in Court we have a singular
 Stat.

If then two or more persons & one dies
 possible the action will not abate provided
 the cause of action is survive to the
 survivor & in almost all cases where two
 properly join the cause of action will
 survive but not in all, as in a suit by
 husband & wife for a tort committed to the wife then
 if wife dies possible the right of action does
 not survive to the husband tho' if the wife husband?
 has died it may have survived to the wife

Stats of 17 Cas 2^d & 1st of the 10th 3^d

So too when one of several depts dies pen: lite the action will not abate provided the cause of action is such as that it will survive agt the survivor, & in almost all cases the cause of action does survive when two are properly joined.

If a sole p^{ty} dies pen: lite in a case in which the right of action do survive in favour of the ex^{or} the suit will not in gen^l abate.

So too if a sole def^t dies pen: lite in a case in which the cause of action survives agt the ex^{or} the suit will not in gen^l abate.

In Engl^d the suit shall not abate in these cases if the death happens after an interlocutory judgt, but scarcely suit does abate. The interlocutory judgt here meant is, that of the writ of inquiry of damages. & In Engl^d if verdict is given & before judgt either party dies final judgt will be rendered none the less is as if a day in which the party was alive.

4 B & C 42
Atkins 647
Collo 144.
Gower 448
42 R 431.
Sal 42
10 B & C 305

In Cont^t the suit will never abate in what stage of the proceedings the death happens.

Stat of 17th Car 2^d & 18th Car 3^d

When a man dies the debt is left
up to the executor to pay his name in & c
if the will suggests the debt must

When a man dies the debt is left
up to the executor to pay his name in & c
if the will suggests the debt must

When the debt is left up to the executor
to pay his name in & c if the will suggests
the debt must be paid by the executor
if the will suggests the debt must be paid
by the executor

When the debt is left up to the executor
to pay his name in & c if the will suggests
the debt must be paid by the executor
if the will suggests the debt must be paid
by the executor

When the debt is left up to the executor
to pay his name in & c if the will suggests
the debt must be paid by the executor
if the will suggests the debt must be paid
by the executor

When the debt is left up to the executor
to pay his name in & c if the will suggests
the debt must be paid by the executor
if the will suggests the debt must be paid
by the executor

Our court stat has not a very liberal construction & where possible for one thing, does the case may continue the petition & vice versa of the other party, etc.

Day 11

Variance is another cause of abatement. 2d 5. & variance between dec^y & a. l., a variance 1st 11 249 may be such as that a plea in abatement 4th 11 404 is unnecessary & the 2d a. l. in motion set 5th 11 22. the dec^y aside but this head of abatement 2d 11 12. is virtually done away by the rule of 1st 11 244. & it is not to grant any of the a. l. 1st 11 47

If the variance between the a. l. & dec^y is only in form it must be taken advantage of only by plea in abatement but if the variance is in substance the a. l. in abatement is proper yet not necessary for advantage can be taken if it is at any time & the C^t may dismiss the suit ex officio for the variance, 1st 11 185 190

There may be a variance between the
 o.c. 14 instrument said upon & the description of
 21111111 it in the writ. & this variance is good
 11111111 cause of abatement

11111111.

Common &

Abt. 12.

So if there is a variance between the
 Common & instrument counted upon & the description
 of it in the dec.

Doct. 11.

Common &

Abt. 12.

But the usual mode of availing of
 this variance is under the great issue
 & in this way the Deft may obtain
 a non suit. & instead of being
 leaving late & long & when produced in
 evidence its date is 2. 1. 11111111.

11111111. 1. 11111111 11111111 11111111 11111111

11111111. 11111111. 11111111.

When the Deft takes advantage of the
 variance under the great issue the instrument
 is read to the jury & in finding the
 variance the J! will order a non suit.

Pleading 1st.

There are four diff^t modes in which advantage
may be taken of such variance 1st in which
in abatement 2^d under the seal issue 3^d by objecting to its admission in evidence
under the genl issue, & 4th the deft may
pay over & rectify it variation on the
record - then demurring to the dec^t
for the instrument rectified is taken to be a
part of the doc when it is set out on
over on the record,

1st term 317
2^d term 334
3^d term 341
4th term 341
5th term 341
6th term 341
7th term 341
8th term 341
9th term 341
10th term 341
11th term 341
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98th term 341
99th term 341
100th term 341

The misnomer of a party may occasion
a variance & since it may advantage
may be taken of it in any of the
preceding modes. But misnomer can
occasion a variance only when a written
instrument is concerned therein, & it is not seen
not always there / Stark 47.

5th cause of abatement is the non joinder or misjoinder

If one person sues alone where several ought to have been joined the non joinder can always be pleaded in abatement & it makes no difference whether the action is contract or tort 73 R 243. 1 Saund 291 R. 1 dash 4. Co Litt 104 (a). 1194. 1195 R. 1980.

202 143 So if several join where one of them
1 Leon 315 ought to have sued alone the misjoinder
Hob 72 is universally pleadable in abatement

But in some cases the exception may be taken against it under the general issue, not in all,

1 B & P 75. Where the objection arising from non joinder or misjoinder of parties gives in denial of the dec^t or of any material averment in it
2 Stra 620. an advantage may be taken if it
Peak 6205. under the general issue, seems not
22 R 282

Ex if in an action on contract one sues alone where another ought to be joined or if two or more join as parties on contract when one ought to have sued alone advantage of the non or misjoinder may be taken under the general issue, for the contract proved in evidence does not support the dec^t

181
Case 401 In the case where the debt under the rule
2d 2d 2d I've may show that it would hold the
debt for all be transferred together with
the debt not to defeat the action but in
contingency of damages.

Case 402 And it is part of the action and also
Step 402 for a total of the debt may not defeat the
2d 2d 2d but it is part of the action the other part
022. may be one for the total

Case 403 But if the person who is in total when the
Step 403 right of action is in one of them only
Case 403 advantage may be taken if this misjoinder
Case 403 under the joint issue for the proof that
one is the sole owner sufficient the joint
issue the allegation in the declaration that A & B
owned the chattel trespassed upon the joint issue
denies the fact & if this fact is disproved the plea
will be nonsuited.

If one of two joint debtors is sued alone on contract the non joinder of the other must be pleaded in abatement. For if the non joinder appears on the face of the dec^y it unless it appears ^{on the face} that the person not joined is living! For the fact that the debt promised with another does not prove that the debt did not promise he did promise tho he did not promise alone.

5 Binn 204.
2 B & 449
5 B & 656
1 B & 291
2 B & 230.
5 B & 327.
Camp 152.

Art 101 * when merely an abateable defect appears on the face of the pleadings is it in any other case fatal - Non joinder of Pl^{ts} in tot not fatal tho it appears on the face of dec^y (anti) 1 Ch Pl 32 (Hut) so it has been held where the action is of quasi contract that the non joinder can be pleaded in abatement. Ex case of baile. But I think that it can not be pleaded at all either in abatement or an when also an action is said to be of quasi contract where the inducement is contract of the joint party. the latest authority is in favour of I B's opinion.

2 B & 305.
1 B & 449.
1 Ch Pl 32, (Hut)
1 B & 291
5 B & 327
2 B & 305
3 East 52.
5 B & 70.
5 B & 449
5 B & 70.
1 B & 78:9.

5 Ben 2611 But if an action is brought by one who
 Mont 34 has ought to have been joined & it
 6. R 790 appears in the face of the act the
 1841 dea is insufficient in law & the Court may
 [etc.] - dismiss - this supposes the action to be
 distinct

When an action has been started for
 the recovery of a necessary debt &
 a new action is brought including the
 same debt the new debt may plead
 in abatement the recovery of another
 debt & so on ad infinitum.

East 701 But he who has pleaded in abatement
 that another debt to have been joined
 cannot in the second action plead
 the recovery of any more not mentioned
 in his former plea.

If two are sued on a contract made
by one only advantage of the misjoinder 1 East 41
may be taken under the rule if one 2 L R 454
it goes in denial of the debt. 2 L R 272.
Phelps &
Butter

In such a case is the jury found in verdict 3 East 112
for one & not the other ^{on the ground that the former did not promise} 1 East 361.
have judgment of the other for here the verdict
itself contradicts the debt
and in such case the Plf cannot enter 5 E 47.
a nil pro quadam

If however two debts are sued in a 1 Stra 493
tort action committed by one only the 504
fact that the other is not guilty is 1 Rep 2336.
not a good plea in abatement nor 1 Co 159.
can advantage be taken of it at all 1 Stra 420.
5 R 644.
3 East 62.

where several debts are sued as tort
feigners the rule is that misjoinder
and non joinder is not predicable
of the case.

One exception If one is sued in tort 5 R 651
arising from the holding of real property 1 Edmund 246
by himself and another the non joinder 2 R L 112
of the other is predicable in abatement ^{common D}
this is the only exception & the established 4 L R 6.
by authority yet it is a mean thing, 2 East 574
1 L R 75.
14

(th cause of abatement pendency of a
prior suit for the same cause of
action, see 61 a + b. 1 Par 13

510 61 a But the suits must be of the same kind
400 114 or at least concurrent. in both must
420 41 a be adapted to the case in the rule does
not apply & while there is pending
Plf brings trespass - in a case where both are
concurrent,

But this rule does not prevent a party
from pursuing diff. remedies at one
& the same time when the law allows
him two remedies. & mortgagee may
at the same time sue mortgagee in
equity on the note &c. & a bill in
equity for foreclosure

11 a c 13 and to bring a case within the rule
420 41. the first action need not be pending
Doct p 10. at the time of the second in relation
to the second, if the second was
commenced while the first was pending
the second was at initiation & existing,

11 a c 305 But if the Plf can sho. that at the
512. time of commencing the second it was
manifest that the first could not
have aided the first the second
will not abate, for the second is
not then vexatious. & first action
clearly misconceived.

... is a cross which then shall be a
new apt added in the second suit -
it seems good for all the debt.

4 Dec 17.
15 Dec 17.
4 Dec 17.
15 Dec 17.

... the ... in the first suit ... the ...

If an action ... is ... 4 Dec 17
action for the same cause on the same day ... 15 Dec 17
... the first is ... the
... presumption is that the first
was ... before the second was
commenced.

But it is no cause of statement that ... 4 Dec 17
another ... a prior action is ... 15 Dec 17
for the same cause as another

... had it alleged ... 4 Dec 17
... in case of ... 15 Dec 17
the ... discretionary ... 1 Dec 17
... may ...

If two informations are exhibited to
 406128 diff^r persons on the same day, each of
 More 1848 is said will abate the other & final
 100922 judgment will be given on neither
 1.7.45 for as these private persons are more
 31 Nov 1844, volunteers, there is no reason for dispensing
 with the rule that there is no fraction
 of a day.

100922 7th Nov the writ was awarded, judgment is given
 406128 plus an abatement.
 100922

When a writ is made returnable to any
 11th 1841 other than the next ascending term, judgment
 100922 the date to which it can be taken is returned
 100922 the writ is utterly void, the defect may
 be taken advantage either in abatement
 or in a new plea.

If the writ were merely voidable
 the Def^t might be held to bail or
 imprisoned for or twenty years.

100922 Where the writ is issued without competent
 100922 authority, the defect may be pleaded in
 100922 abatement or the writ may be treated as
 4 Dec 43 an entire nullity, the Ct may dismiss it
 on motion.

all any other defects are cause of statement
 that if the debt has a defect in return, i.e. 20050
 if the time between the date of the time is 20050
 the return is the debt. in such time time 20040.
 must be 15 days. 200450.

So if the return of the debt is insufficient on the
 face of it, it is if it appears from the shifts
 return that the debt has had no notice.

But at C & if the return is sufficient on the 20043.
 face of it the debt cannot be paid in 20043.
 a return of contradiction the shifts return
 but must see the debt for false return.

In court the rule is that the ^{debt} return may be
 by plea in abatement contradict the shifts
 return.

another defect which is cause of statement
 is want of venue in the debt want of 20044.
 venue in the debt is cause of statement. 20044.
 venue is the place in which the debt is
 contract is alleged to have been made or
 made.

The want of venue is at the day only matter
 of form. There is an absolute difference
 between a plea said as venue & plea
 said as matter of jurisdiction. 20044.

(90)

(97.)

to if Rf alleges that a wrong was
 done 594 committed in a given parish for venue
 2d 595 this in transition action it may be tried
 in Rf. of forum. But if Rf alleges that the
 1st 596 wrong was committed in the defendant's parish
 1st 597 of Rf's parish.
 2d 598 Rf's parish.
 1st 599 Rf's parish.
 2d 600 Rf's parish.

In transition actions it is no objection
 to the writ that the venue is untimely
 laid but the court in its discretion may
 remove the venue - the venue must be
 laid in the county in which the action
 is brought. 2d 601 Rf's parish. 1st 602 Rf's parish. 2d 603 Rf's parish.
 1st 604 Rf's parish. 2d 605 Rf's parish. 3d 606 Rf's parish. 4th 607 Rf's parish.
 5th 608 Rf's parish. 6th 609 Rf's parish. 7th 610 Rf's parish. 8th 611 Rf's parish. 9th 612 Rf's parish. 10th 613 Rf's parish.

In local actions if a given venue is laid
 it is good cause of abatement.
 1st 614 Rf's parish. 2d 615 Rf's parish. 3d 616 Rf's parish. 4th 617 Rf's parish. 5th 618 Rf's parish. 6th 619 Rf's parish. 7th 620 Rf's parish. 8th 621 Rf's parish. 9th 622 Rf's parish. 10th 623 Rf's parish.

In count the Rf in local actions must
 lay the venue in the county. But in transition
 actions if the action is before the sup:
 of a county it must be laid in the
 county in which Rf resides, or where
 before a single magistrate it must be laid in
 the town in which Rf resides, or where the defendant resides,

8th That the cause of action is misnomer
is good cause of abatement the the rule 4-6-1847
not be pleaded in abatement. Comd
1847.

9th That the cause of action had not
accrued at the commencement of the writ
but that the Plt when he commenced the
writ had no right to commence the writ
the writ. If one brings an action of 4-6-1847.
indemnity before letters of administration are granted
see 1847.

Pleas in abatement regularly begin & conclude
to the writ as it begins by praying
judgt of the writ because he & concluding
by praying judgt of the writ that the same may be
quashed &c. 1847.
but where the plea goes to the dec it
shd begin & conclude to the dec. 1847.

Where the plea goes to the person of the
defd the 1847.
1847.

The character of a plea has been said to
be determined by its commencement - nothing
else 11 Mod 112. 12 Mod 124. 1847.
But this does not appear to be the true rule

The beginning & conclusion determine the character of the plea as a plea in abatement or plea in bar. Id. 514 & Har. & P. 445. 2 bound 204(c)(d). de Ruyne 301. 1019.

If the beginning & conclusion decide both in abatement or both in bar then the reference to subject matter determine its character.

Suppose the plea begins in abatement & ends in bar or vice versa if the subject matter pleaded is good only in bar the plea is a plea in bar. de Ruyne 543. 1018. 2 bound 204(c)(d) 1 Ch. R. 445. c.

West 236. If matter all is good only in abatement is pleaded & the plea begins in bar & concludes in abatement or vice versa such a plea if found against the defendant is a plea in bar if found for the defendant it is a plea in abatement only.

If matter all is good only in abatement begins & concludes in bar the plea is, at all events, a plea in bar.

West 173. When the fact pleaded is good both in bar & in abatement & the plea begins & concludes diff. ly the defendant has his election to treat the plea as a plea in abatement or as a plea in bar.

A defendant cannot at any point two diff. ly abatement pleas, or two diff. ly bar pleas, or abatement & bar pleas, but a defendant may be pleaded in improvement but this does not allow a defendant to plead in abatement. Id. 514. Law 107. & book it into c. 4 of 200. 1 Har. & P. 445. c. 1 de Ruyne 301. 1019. & bound 204(c)(d).

Pleadings &c.

When cause of abatement is pleaded & judgment is on it error is practicable if the plea is of judgment in chief but error lies not on the judgment unless after final judgment is rendered for notwithstanding the plea the plea may prevail on the merits & then there is no necessity for the writ of error even

But new matter of abatement is no ground of error unless it is pleaded in abatement for, unless pleaded in abatement it is waived this rule is founded on a good rule of policy & expediency -

20 R 200
21 R 15
Doct 115
Cott 24
5 R 154
Shap 100
1 R 100

(One exception ante 89. Nonjoinder of Dfts in count

As to a sci fac or judgment the debt is not allowed to plead any thing with the might have pleaded to the original debt.

1 Bond 214
1 Ch 2 316
5 R 110
Stra 32
Hill 258
Coat 11 200

A writ may be related as to part of the demand and remain good against the residue, by suit on the counts & on two counts, & one count was rejected by the debt with another.

2 R 200
Lam 100
1 Ch Pl 444

And sometimes the debt may place in abatement
 as to part & in law as to the residue, but
 this rule can apply only where there are
 two debts.

It is clear in abatement does not in general
 go to the merits but only to some
 informally a good rule in such
 place is not in whole a bar to a subject
 action for the same cause.

4 Co 41, 42 That in some cases part in which is
 void part. voided or a plea in abatement & there
 is. part is a good bar to a subject
 action.
 1 Co 41, 42
 common law
 4 Co 4

2 Co 12 If part is given for the debt it is
 12 Co 22 that the debt is not a debt until it is paid
 4 Co 12. see the 12 may being a subject
 2 Co 44 action

2 Bl 301 If the debt is paid for the 12 in
 12 Co 7. compared to a plea in abatement it is
 2 Co 107 important matter
 1 Co 142

If an issue in fact is joined on a
 plea in abatement & issue is found for the Verdict
If the judge is final this rule is East 344.
 intended to discourage false dilatory pleas 15.
2 Will 368.

28 Rayn 504
Rayn 119.
6 Allod 236.

This rule does not hold in case of plea,
 in abatement in indictments for capital
 offences. 2 Fulk 334
1 Bar 1574

It cannot if an issue in fact on plea in
 abatement is closed to the jury the issue cannot Rayn
 if found for the Plf causes final judgt
 but if the issue is closed to the Verdict
 judge's respondent order is given.

If matter of mere abatement is pleaded in Scheyn 1010
bar judgt in chief is rendered agt the East 344
dict. 11 W 445

Wills 410. The deft cannot demand in abatement what
 274. means that the deft cannot demand for
 any defect in the crit

Wills 172.

Will 410 P.

105.

Will 220

Will 47.

Will 1958.

Will 2457.

Will 731.

Upon such a demand, plaintiff goes out the
 deft in chief, for if he will demand
 he cannot afterwards plead & as his
 demand is bad, plaintiff must go against
 him.

Will 231.

This does not hold in capital
 cases, and now deft it seems is always permitted
 to withdraw a demand & plead in C.

Will 100. In demand to the deft concerning the
 Will 100 in abatement, plaintiff must go against
 the deft.

Rob 116. After a verdict of respondent, under the
 Will 401 deft cannot plead a second plea in
 deft & abatement. He can bring only to the
 issue & action.

(See via)

(See 2427)

But where in ^{law} that the writ
be abated, the ^{Def} is allowed to
demand the ^{Def} may plead in
abatement to the amendment with

111-50.

By the English rule of practice the ^{Def} 3 B. 216.
may not plead in abatement after verdict 4 B. 219.
impanelment, unless the cause of abatement 143.
arose after the impanelment 150.

The same rule applies after the time allowed
in practice for ^{pleas} in abatement is ^{conclusively}
expired. 111-51.

In Count the time for pleading in abatement 111-54.
in the sup. of Ct is before the opening of
the Ct in the afternoon of the second
day of the Ct. On the 2^d of the Ct the ^{Def}
must deliver his plea in abatement before
the jury are impanelled, or on the 3^d day.

but where the law continues an action
from one term to the next as in case
of foreign attachment the ^{Def} is allowed
the same time in the second term as
he usually is in the first. Grant.

After a writ has been stated for any defect
 in the form of the writ the 2^d may amend
 in payment of costs. so when the defect is
 defective and then the writ is read & some
 more. The 4th to amend & compare the 1st to,

Pleas to the action,
if these then are the true issue & special
pleas in bar.

Issue is defined to be a single certain point
& material point issuing out of the pleadings
or allegations of the Plf & def. Scott 20, 41
congr 54
pl, 2.
4/3/54.

this defⁿ is incorrect in the term 'material'
this is a correct definition of a good
issue.

this point usually consists of an affirmative & negative
two & negative according to the strict rule of pleading except in the case of right
of right there must be a direct affirmative & negative
and negative in one issue. If then we
say that A is a man & B replies
that A is alive there is no issue.

But this rule requiring a direct & negative
has in one or two cases been relaxed, & if
Plf said he was born in France & def replied
that Plf was born in England it was held
that here was an issue.

In the next & right the issue is
always consists of two affirmations out for
this very reason it is called a issue
not a strict legal issue.

It is always safer to close the issue with a direct affirmation or negative answer than to leave to counsel & uncertainty. It is always simpler & safer to form the issue in this way.

There has been no reference here to the third rule in the case in Stra.

an issue in fact is always said a special or a joint issue, or a 'common' joint & special. 4 Mac 54. Lanes 110. id 193. Lanes 112. 1512 212, but there is no necessity for this threefold division, non est facti is the joint issue in covenant as much as in debt or bond.

Sec 55 The joint issue is a denial of the whole & Mac 54 but it puts on issue all the material allegations of the dec^t every thing which the Pl^t is bound to prove.

A special issue is one joined on some particular part of the dec^t where the dec^t consists of several distinct independent statements or independent allegations each of which are necessary to the Pl^t's cause of action the Def^t may deny any one of them.

The issue of the record is the record not the act is to be tried. 4th on.

The issue of the conclusion to the country & must be tried by the jury & this is the issue of the fact in fact. Co. 1st 1st 1st.

2nd 1st 1st.

But this is not universally true that the fact is not tried conclusion with a verification so when the fact is by inspection inspection inspection of fact to the fact conclusion to the fact with a verification.

The issue of the record is before said conclusion with a verification the fact then verification the existence of the record & conclusion by praying that the fact may examine to -

2nd 1st 1st.

2nd 1st 1st.

1st 1st 1st.

2nd 1st 1st.

But if the record of a foreign municipal act is denied by fact the fact must conclude to the country for the record of a foreign municipal act is to be tried by inspection inspection & is not to be proved by fact it cannot be tried by inspection it is tried by a fact.

The record of foreign act of admiralty are tried throughout the act & the act is tried by the fact by inspection.

When a writ of one of our own municipalities is read in England as lost by Statute 473 remains to the writ is denied the writ must conclude to the county.

and by a statute in 1801 the parties in a writ against a party in front to the writ the writ extends only to civil cases.

The issue joined before a single magistrate in civil cases concerns in front to the writ.

That under our new constitution no person can be tried for a crime except by a jury.

As to the form of tendering an issue to the writ side —

The issue is not joined until after tendering the writ of one of the other party also the similar writ 170.

The origin of the similar has been held to be fatal but in court it has been determined that this origin is voided by verdict, for now the master always states that the parties joined issue, & judge in England has been estate bound measure to avoid the operation of the rule that the origin is fatal, 114 (a). 170.

(112)

In issue joined closely the pleadings,
and when an issue is well tendered on
one side it must regularly be accepted
by the other — one or two exceptions
except 10.

But if an issue is ill tendered as if it
is taken on an immaterial issue point
the other party may demur.

An issue in fact regularly contains the
words in manus form — now these
are more form in other than
are of the substance of the issue.

When the words of form manus they
do not put on issue the circumstances
pledged as accompanying the principal
act denied, so they do not deny these
circumstances unless it is material that
these circumstances be proved,
by A and B in battery & charges B with
beating A with a sword now not guilty
in manus form he does not deny the
substantive, the sword is not material,
so if the battery is charged to have
been committed on 1 lang.

But where any particular fact alleged
 as attending the principal fact is material
 the words in manner & form do put in issue
 upon this particular fact, & in such case
 a plea is laid as a local objection not
 as venue & says that such a fact was
 committed in that place the whole
 in manner & form as done the place
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Here words then do put in issue if venue
 then circumstances alleged in the other
 side are material.

In an material issue is one not bearing
 a material allegation in the other
 side takes issue on an immaterial
 point and will does not decide the
 merits of the case.

If Deft traverses, moves matter or
 inducement - then the material
 allegation, or deft denies what is
 not alleged in the bill or traverses
 more in substance,

One such issue is not aided by verdict
 when found for the party tendering
 it, but when if found against the party
 tendering it.

Ex again on apt apt on Ex. if Ex.
 change plead that Ex did not promise
 3.12.395. the offer is material

But if there is no material allegation to
 be traversed on Ex's conduct on any point
 if it is not material for the offer
 is as good as the proceeding on the
 other line and since if it is in the
 case after a great number will not
 be needed

An offer cannot require to be proved on
 a negative point but a affirmative
 point and it is in the offer
 if this takes the defect is not needed
 by request

Now a negative point is a
 negative allegation which however is
 still open to an affirmative
 implication in favour of the other
 party. Ex says please release since the
 offering of the suit & Plf reply that
 he has not given a release since the
 offering of the suit, this is a negative
 point for it is consistent with the
 possible ^{affirmation} allegation that the Plf released
 before the offering of the suit

in this case if the jury find for the
 Dept he will have judgment but if for
 the Df at Co. a replender in a
 all cases be awarded.

The Df has replied that he had
 not given a release in manner & form
 as the Dept has alleged & that the
 time at which the release was given
 being immaterial the question for
 the jury is have been whether such
 release was ever given by the Df.

An issue on a negative argument is now aided after
 verdict by 32 & 41 which way the verdict is found
 by 32 & 41 and 319. 261. 261. 261. 261. 261.

or master frequent request when
the operation is not up to
standards the same is before set up by the
other side,

4thly A negative frequent is not the way to solve a
special demand.

5thly

note

as you find in a negative frequent in fact
it is not what is material but an open standing material
nothing material.

Pleadings (No 7)

an informal issue is an issue taken on a material point but wrongly taken on point of form
this is aided by indirect evidence
11 Warr 103. 1 Ld 12, 2 Ld 137 10 Ld 19.

The question arising the whole duty the defendant under this may contest every material allegation of the deed but it is allowable to plead the deed open in some cases where the whole deed is admitted. In which the deed is on a contract which is void to an absolute incumbrance on the debt the deed open may be pleaded & the incumbrance given in evidence.

but when a deed a contract is void on its own nature the plaintiff cannot be taken advantage of under the deed issue as to the legal effect of such a deed to create a debt it is altogether void

Is when a deer is obtained by snuff or
Cp 121 made by an infant. These facts cannot
be taken advantage of under the rule
4067. fine
100.

C. 1155

Lab 675

Sta 401

Lab 475

When it is a good rule of the Co that when
C. 1155 is made, it must be made by about the same
4067 matter which makes it valid must be
Cp 221 specially placed. for the defense is
C. 1155 inconsistent with the rule above.

It seems to me that man be given in evidence
under the rule above. at least if he
has alternative made in the same after
4067, or not. I believe C. 1155 is
4067 by Cp 221.

In great matters of fact and law
in the same way. C. 1155
Lab 475.

The com law rule is if the defence is
consistent with the civil issue it is admiss-
ible under the civil issue otherwise not.

But in indebit. exp. any thing
will show that the def has no right
to recover at the time of his plea
may be given in evidence under the
civil issue.

In the former case
in indebit. exp. is all the legal
consequence of the indebit. exp. & if
conceded that in extinguishing the
indebit. exp. destroys the promise so
that the plea of indebit. exp. means
the same as indebit. in fact or
simple contract.

Under indebit. exp. the deft may
give in evidence every payment account
& satisfaction, and recovery, & specially
given in the same infancy, coverture & non-
award, release.

But as to indebit. exp. it is thought on
principle that this defence sh. not
be given under the civil issue. But the
practice is well settled that it may
be given in evidence under the civil
issue even in indebit. exp.

3 Burr 1210.
4 Burr 405.
9 Burr 1387.
10 Burr 717.
11 Burr 11.
12 Burr 141.
13 Burr 1402.

14 Burr 175.
15 Burr 190.
16 Burr 111.
17 Burr 17.
18 Burr 17.

19 Burr 41.
20 Burr 46.
21 Burr 712.
22 Burr 171.
23 Burr 17.
24 Burr 11.
25 Burr 11.
26 Burr 11.
27 Burr 11.
28 Burr 11.

18191 But on the principle of a Stat of
 18141 limitations, under bankruptcy - set off
 18178 cannot be given in evidence under non assumpsit
 18179 The same given in the books of the
 18181 these latter depend on matters of law
 18182 will then not go to the question of the
 18183 action.
 18184 But the same reason is that these
 18185 depend on matters of law, and
 18186 are not admissible in the indictment.

18187 But the limitation of following a special
 18188 defendant under the Stat of 18141
 18189 will not be admissible in the indictment, or
 18190 the indictment remaining in force.
 18191

A person who is in the same state
 in regard to the law must be a person
 of the same

In debt on simple contract the same
defence in writ may be given as in common
under the writ of assumpsit but in writ of debt
be given under the writ of assumpsit 26.

It is said that under a writ of debt the
debt may give in evidence the statute of
limitations but not debt / Gould thinks
they incorrect in principle, however the rule
is well settled by authority.

In assumpsit advantage may be taken of the
statute of limitations under the writ of assumpsit
objecting to the evidence.

Can defence to the action be given at law
be specially pleaded may it be given
given in evidence under the writ of assumpsit

Account is now a debt specifically alleging
the account in the writ of debt but in
debt it is that the debt may give in
evidence under the writ of assumpsit but
except some act of the law all give in
discharge or satisfaction of the debt
but the writ of debt is not a writ of assumpsit
defence which at common law is specially
pleaded.

In case the right in the copy may specially
 point out the right, then in contact with
 it, it is more nearly given to the
 right.

But a special plea will not do to
 the point of view of the court, if it contains
 special matter of justification.

3d 4011
 2d 208
 1st 211.
 1st 211.
 2d 211.
 1st 211.
 1st 211.

Again the court in its discretion may allow
 such a plea when the facts present
 more than a simple in the law, i.e.
 where the facts present a distinct
 question of law. But they are matters
 of mere indulgence.

2d 211.
 1st 211.
 274

And in the case of a plea of
 property is allowed by giving to the

Reading special, what wants to the seal
 11/25/94. When not warranted by the excep-
 12/1/94. tion is it to be done to the extent of special
 100. demand. But according to the law, it is
 4/25/94. ground for a motion to the Ct to set
 100. aside the former plea & enter the same
 100.5/94. for

11/25/94. — 8/25/94. 10/25/94. 11/25/94. 12/1/94. 100.5/94. 100.5/94. 100.5/94.

100.5/94. The latter opinion of the Court, I think, is correct,
 4/25/94. but perhaps both the opinions may be
 100.5/94. right. The reason for it, for the Ct to
 100.5/94. make a motion to the Ct & if the Ct
 100.5/94. will not the plea & the Court directs
 100.5/94. to put in a new plea & both parties
 100.5/94. join in demand the Ct will determine
 the question in demand.

100.5/94. But if after the plea on motion has
 100.5/94. been allowed by the Ct the Court
 4/25/94. directs to enter another plea the Ct may
 100.5/94. sign judgment.

A special plea with allegations of fact, all
in evidence or support the gent issue
does not of course amount to the truth
the special plea with allegations of fact
to be true can amount to the gent issue 1 Ch 497-8
even tho' the facts alleged in support of the
gent issue

None in a pamphlet the Dept may please to paym't
specially a release the measure is good evidence under the gent issue for it admits the truth of the declaration
to paym't infamy &c. &c. 1 Ch 497-8
1 Ch 497-8
1 Ch 497-8

By giving colour is meant that the Dept 10 Coll. 40
admits a bad title in the 2d is to enable him to set his own title on the record, the Dept presents in the record a comparison between his own title & that
of the 2d & this makes a question of
law.

The Dept when he gives colour must take
care that he gives the 2d a defective
title,

of plea entering before facts will be
with 240. to replace the same upon a concluding
with 244. with the same upon a good plea
Went 4. the plea is either a full one with an
affirmation or a special verdict bottom.
By the best man, plead that the deed
on which he is sued was done as an avowry
"so is not my deed."

The plea must conclude to the country
"not 25. Pleas 26. Went 4. 210. Ball 244
Ex 212. according to some it may
conclude with a verification. Ball Ex 104 5.
Nov 12. but that is a criticism on
saying that it may conclude with
a verification. If it may, it becomes
a special plea amounting to the
same plea.

But it has been held that such plea
may conclude with a verdict because
the Pt may plead on full 274. 5.
But I think that the Pt can never
plead on in any other way than
by denying it.

Such a plea is undoubtedly demurrable
Ball Ex 104. 5.

and it says that a special verdict is not
 important because the facts follow
 the issues presented. In some cases the issues
 are presented but there is nothing
 important if the facts follow to do
 it.

Special pleas in law

are really defined to be such as
 admit the facts stated in the dec't
 & go on in avoidance of them.

4 Bac 2

Lam 37.8.

115.

This is in real true but it is not
 essential to a plea in law that it
 sh^d admit the whole dec't so far
 from it it frequently concludes with
 a traverse in some material part of
 the dec't.

119.

4 Bac 70.95.

406104

Ch 34.15.

2 Vent 79.

Co 230.

4.15.

This plea is one which alleges special
 a new matter in bar of the dec't &
 concludes with a verification.

It is true that such a plea admits
 an undeniable fact which it does
 not deny & goes in avoidance of those
 which it does admit. 4 Bac 2: 73.
 1 alk 91. 1 With 338.

There is one special plea which neither
 admits nor denies the acc^{us} - a
 plea in etoppel. 1 Bac 301. Willer 13.
 2 Crut 340. 305. Lane 18. 130. 140. 146.

2 AD 315.

In pleading a justification the deft
 must confess the fact which he intends
 to justify. 1 Lane 28. 211. 32 R 245.
 1 Lane 412. 1 alk 294. 2 Crut 310.

By this rule it is not meant that the
 deft must in terms confess the act.
 The rule means merely that in pleading
 a justification the deft must not
 either expressly or by implication deny
 the fact.

It appears from the case above advanced that
Matter is really in the affirmative and
always so in a negative case.

213639

Every thing pleaded is ruled new
matter except a direct & express denial of
the allegations on the other side.

And as the plea advances new matter it
must regularly conclude with a verification
but the plea of bankruptcy by 5 Geo 2
may conclude to the country.

The right of replying to new matter is the subject of
party replying pleases is regularly assigned
until a proper issue is tendered.

213639
213640
213641
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213643

But a plea merely negative that it shall
new matter need not conclude with a
verification for no party can in such cases be
required to prove a negative.

213644
213645

a plea which forms a complete & proper
 plea trouble by a plea & not containing
 new matter must not close to the
country Raym 48. Coatl 130 309.

When the defendant alleges a distinct matter of
 defense to differ parties in the last he may
 include such defense with a distinct
 specification or all with a general
 specification & demand 331 fol. 330. 1 alk 312
 308. Coatl 40.

Coatl 188. Every defendant must plead such a plea
 303. in pertinent
 + Bac 83.

Requisites of a special plea

Every special plea must contain a full
matter in matter which is true in an issue
2 Wils 74. James 157.

Every plea in abatement & time must be
pleaded that the cause be distinctly
separated by Act, 9 Co 25a. called 55
4 Bac 68. James 138.

a plea in bar must answer the whole
graveramen or cause of action. If it
does not it is ill. By motion for
a pt. better & motion & a pt. plea, that
which will justify the a pt. & better but
not the bar plea. The plea is bad as
to the a pt. & better, so bad as motion
to it trespass if a pt. plea, a motion
he must add a traverse that he deny
nothing as trespass subsequent to the
release.

2 Wils 126

2 Wils 126

2 Wils 126

127 210.

3 Wils 375

406 227 8

2 Wils 318.

4 Wils 124

10 Wils 66

This same principle applies to all the
subseq. pleadings. The plea must answer
all that is material in the plea to.
397.
2 Wils 126

15 Wils 40

1 Wils 126

397.

2 Wils 126

But a debt may plead diff^r pleas to
diff^r parts of the debt & here all
the pleas taken together must contain
an answer to the whole otherwise they
will all be bad. Ex in a prom^t for
\$1000 & the debt pleads as \$500 was
a prom^t & as to the residue tender
it off &c. here the two pleas taken
together answer the whole.

If matter pleaded be an answer to the
whole debt is in law an answer only
to a part of the debt the plea
is wholly ill. Nov 25. 4 Bac H. Croft
& Howard.

Reverling. 1898

Every plea is taken to be intended as
an answer to the whole ~~case~~ unless it
is expressly limited to a part.

If the Def't. pleads purports to be
an answer to the whole case & is in
law an answer only to part of the
cause of action the Plt. sh. demand for
have an answer as given to the whole
whh is insuff in law. Ex. action for
def't battery & mayhem def't pleads a
negl of lookt. ths is no defense to
the mayhem. the plea is therefore
insuff - the Plt. sh. demand for the Plt.
recover damages for the def't battery &
mayhem

Salk 177

20 Raym 301

sta 303

, Bond 212

But if the Def't pleads a defense
as a defense to part only of the cause
of action & the defense is in law
an answer to part only & the other
part remains unanswered ths is
a discontinuance by the Def't. & the
Plt. sh. take judgment for rent of a
plea, & not demurr for the Plt. is
entitled to an answer to the whole - he
sh. not accept an answer to part. An
answer to part is no answer

Bond 212

4 Co 62

Salk 177

140

sta 302

20 Raym 301

sta.

Plf

And if in this case the Df. sh. demur
the whole action w^t be discontinued,

Suppose the Df. sh. pleaded to part
in fact, w^t have been suff^t in law.
That the whole cause of action if it had
been pleaded to the whole what in
this case must the Plf. do? the plea
is confessedly bad. I sh. think the
Plf. must not demur, the fact that
the matter w^t have been a suff^t
defense in law if properly pleaded,
can make no difference, in truth the
Df. has not answered the whole
I said 20 p. 7. 4 Co 62, Ltra 303. 10 Hl 4 p.
Lanc. 136.

(2 B + P 427. in this case it w^t seem
that the Plf. might demur under the
circumstances above but in this case
tho' the Df. commenced his plea by
an answer to part but afterwards
is proposed to answer the whole &
the Plf. was permitted to demur on
acc^t of the inconsistency of the plea,

But these rules do not require the
 Deft to answer any thing which is
 not of the gist of the action, &
 plea which answers the gist of
 the action extends, of course to all
 matters of aggravation by Deft is
 sued for breakfast & entering the Plf's close
 & expelling the Plf, the expulsion is matter of
 mere aggravation if then Deft pleads license of
 law to enter this is suff. & if Plf wishes to
 rely on the expulsion he must make a
 novel assignment in which the expulsion shall
 be the substantive cause of action

22 R 291

2 R 477

636.

14 R 555.

3 R 311.

2 Wils 20.

14 R 28, 49.

a new assignment consists in alleging
 with all necessary circumstances in the
 cap. what is stated in the dec.
 really, or in stating in the cap.
 "as a substantive ground of action"
 what in the dec. is stated merely
 as aggravation.

3 R 311

14 R 291

a R 61

5 R 213

Laws 70.

163. 197.

240.

a novel assignment in the cap. is in
 the nature of a new dec. for it states
 as a distinct ground of claim what
 does not appear so in the dec. Hence
 the Deft may to the novel assignment
 plead the general issue

14 R 291

3 East 294

23 R

It then appears that myt. concludes with
the remark that the reason why
"in the up" are left from these
regions in the plan, is that they

If the this movement is not due
to the sun, plant the seed, from
lines 24. I found 24. 1/2.

there is often a looseness in the books
in using the expression closing the issue
closing the issue is so changing
to the country, joining the issue is
adding the limit

in technical traverse usually ^{leaves} the
issue ^{open} the left then says please tell
in answer, alleging the ^{left} devices
to him & did seized in fee,
now the ^{left} may reply that I
did seized in fee ^{aliquo hoc} that
he did seized in fee this is a
technical traverse & concludes with a
verification for it traverses only a particular
part of the plea
or he may with an inducement
say that I did seized in fee &
that the traverse concludes to the
country.

4 R. 67.

2 R. 264

1 R. 317

Long 20

412.

Calk 4.

1 R. 70.

I left in apt of battery place, on
apt. device that ^{left} may tell that
the left says that the only part of
my own wrong ^{aliquo hoc} is used to
this concludes to the country

It is always proper to conclude to the
country when the opposite party merely
denies all with a plea of the
other side & in the last case the
aliquo hoc causa denies the whole
plea in bar.

But a special traverse should conclude
with a verification because as it
denies one part of what is alleged
on the other side it may be

Jellod 105

3 Br 203.

4 Dec 68.

By the apt & balancing of the testimony as to
by virtue of a warrant like the 2d may
specially traverse the warrant & then
the traverse concludes with a receipt

A Special traverse may in many cases
conclude indifferently to the country
or with a verification but in some
cases it is where pointed out

2 Br 447

2 Br 1072

1 Saunders 133

Saunders 121

I cannot discover any reason why
a special traverse should conclude with
a verification. for when all is
alleged on one side is denied by the
other it is impossible that it should be
necessary for the other party to answer
specially.

a technical traverse differs from a direct denial in common language not only in intention but frequently in conclusion

If Deft pleads that he could not have been at the date of the writ the Off replies that he was alive at the date of the writ also he has that he was dead. This is a technical traverse & it concludes with a verdict¹¹ but the Off might reply that the Deft was not dead with any inducement & then the traverse concludes to the contrary & where there is no occasion for an inducement the Off sh^d conclude with the latter form.

2 Buns 206.
1 Do 103 a b.
2 Cr 304 m.

2 Buns 1022 & 4, again. Deft pleads using the 2 Cr 437. Off may technically traverse the 3 Stra 171. plea thus that the agreement was upon good & lawful ^{previous & present & future} consideration. 1 Buns 321. although hee that it was completely 2 Cr 164 m. agreed. & conclude with a verdict. Off may simply deny the using

This latter traverse as it coincides to law 11,
the country & forms a complete ipse
is not usually called a traverse but
an ipse.

When there is a technical traverse the
ipse is formed by the opposite party's
affirming on what is traversed &
concluding to the country

But is a wrong conclusion of a traverse
a fault in substance or in form?

Ramm 94. Cro C 117. or 104. Sub. Part 240
Sect 203

At C & it seems to have been a fault / seems to be
in substance but since the 11th 25th 1877
amendments it seems that it is only a defect
a defect in form.

When a denial is in the common
negative language it is improper &
deniable to support a technical
traverse.

4th 1877
Sect 111
20th 1877
Part 111
Ramm 94.
Sect 111.

There are cases in which a party pleading special matter.

406100 When one party alleges new matter
4 Dec 67 inconsistent with material allegations
68 70 on the other side he must follow in
11 Feb 253 full place with a traverse of these
18 June 22 allegations.

100 100.

21 June 207

note 4. 107

note 8.

31 Dec 110.

One sort of exception, whenever in answer to a negative allegation it is necessary to set forth affirmative matter specially the party must not traverse the negative allegations.
406100 with all his new inconsistent but
100 100 must conclude with a verification.
31 Dec 110 by note on note bond left replies in
100 100 amount the 1st replies are served calling
out the second & answering a breach
now this is inconsistent with the plea
but the 1st set out not conclude with
a traverse.

is in answer on note bond.

It is stated in some books that every
 traverse (special) must have a proper induc-
 ment or it will be a negative pregnant
 but this rule is not universal & in
 Scotland it is incorrect. & the rule has arisen
 from the case in 1402. In some cases a
 special traverse with an inducement will be
 a negative pregnant & when it is so the
 pleader sh^d plead a new traverse with an
 inducement. In the case of the 1st
 plea that by virtue of the plea the matter
 is immaterial, even if the Df sh^d
 reply that the Df did not yield to
 him the reply is open to the implication
 that the Df did not lay his hands
 upon him at all. He sh^d reply that
 the Df committed an error in law but
 allege here that he gently laid his hands

Conrad
 1472
 1476
 1478
 1482

But if Df pleads that by a Df's
 lead the Df may reply that the Df
 was not dead with any inducement.

When a fact must appear & is not, a
 traverse is what he then confesses & it is
 clearly improper being inconsistent
 with the admission which is made by
 his own plea, viz. of 2d. vol. 168.
 Sec. 214. Sec. 151.

Mich 259

Pl 309

1st 229

2d 57

In such case then the party cannot
 but conclude with a
 confession & with a traverse,

if traverse preceded by an inducement
 then the inducement & traverse both
 go to the same point is but a
 conclusion from the inducement,
 and if the traverse is not a conclusion
 from the inducement the
 inducement is wrong in form at least,

When a traverse with a confession is
 made the effect is to force by
 the opposite parties affirming what
 he has affirmed in his plea
 in bar & conclude to the contrary,
 3d 4. 2d 229. 2d 215.

An offer joined upon an above loc
 must have an affirmative after it
 This is not more true than must
 be an affirmative after the offer it
 means merely that where an offer is
 joined by a defendant there is a

10th Dec
 4 Dec 1887
 18th Dec
 18th Dec

ie an negative allegation cannot be
 traversed with an above loc for it
 it sh^d be the offer not be negative
 negative.

By sh^d be contrast when it was time
 to give notice as a court precedent. If
 alleged. If did not give him notice
 Now if sh^d reply that at such
 a time he did give notice above loc
 that he did not give him notice

This is only a mistake in form

The question of a traverse upon a traverse
 is a matter of substance
 but since the 1st of Dec. it is a matter of
 mere matter of form

There cannot be a traverse upon a
 traverse where the first traverse is
 material

A traverse upon a traverse is a sub-
 traverse going to the same point as
 is embraced by a prior traverse on
 the other side

Nov 24
 Feb 22
 a Rans 24
 Combs & Pl
 917
 Att 74
 1st Dec 403

As where one party has traversed
 a material traverse the other party
 cannot have that traverse and tender
 another traverse when the indictment
 of the first will go to the same
 point to same point of claim & defense

Ex Defs plead like allegations that I
 had seized in Jan & moved in the 1st
 of Dec that I had seized in the
 above has that he had seized in Jan

Now the Defs cannot say that I
 had seized in Jan above has that he
 had seized in Jan. If he might the
 1st might be a question of fact & inference

the Defs must affirm that I had
 seized in Jan & conclude to the contrary

But a transe after a transe is given and the the transe first taken was given

Feb 11/85
C. L. L. or
D. J. L.

A transe after a transe, that is to say to a different point from that mentioned in the first.

Feb 11/85
C. L. L. or
D. J. L.

Ex. 4. A man is in the field and has a license on a particular day with an express here that he may go to any trap on any other day. Now the D. J. is not bound to join in the transe & affirm that the trap was committed on a different day from that mentioned in the license. He may do this if the trap was in fact committed on a different day from the one mentioned in the license or he may traverse the license.

But if the first traverse ^{on any} of material
 could find way then be a traverse
 upon a traverse, by trespass, alleged
 that first cut & sold the 1st tree,
 406. 406. that he cut with license
 1806376. above he that he sold them, the
 406. 406. If is not bound to join in this
 406. 406. traverse as may therefore lead to
 406. 406. the advancement by to the license

Phph. 01. One exception to the 1st rule took
 1806376. then cannot be a traverse upon a
 406. 406. traverse where the first traverse of
 506. 406. material this is where no local
 1806376. action is lost in a transitory action
 406. 406. - the 1st lead,
 1806376. 406. 406.
 206. 406.
 1806376. 406. 406.

Pleadings (No 9)

When the cause of action alleged in the dec^r
is divisible so that by proving part he is
entitled to a recovery the deft cannot make
that part of his plea, which answers only part of the demand
the demand an independent one. 267:4

in the following manner

§ 1025.

Compt & Pl

§ 10.

laws 118.

Ex Debt on simple contract for \$100. B
pleads as to \$50 payment alique hoc that he
owed more than \$50, that is a bad plea
here if such pleading was allowed the deft
by pleading false, might always defeat
the Pl's action. For if the answer is
well taken he must join in the traverse
and if it is found that the deft owed
only \$50 the nothing has been paid
yet the deft must have judgment for the
issue will be found for him to the satis-
faction. Deft sh^d have pleaded as to
fifty dollars payment & as to the remaining
fifty nil debt.

When the traverse & the inducement go to diff. points (the traverse & the inducement) the joining in the traverse admits the inducement

But where they go to the same point
giving in the process never admit;
but hereafter, during the inducement.

But for the purpose of avoiding the admission in the instrument the party to whom the traverse is tendered may use a protestation, 4 Bac. 48. Compt. pl. 12.

But a protestation is of no use in the
cause in which it is made, the use is
to prevent the self from being concluded
hereafter in any subsequent controversy
by this admission on record,

It is more necessary for the opposite
party to ensure a protestation, indeed
it is no part of the pleadings.
Comp. & plead. cases 141. 2 B. & M. C. 111 no.
+ Ben 70. (2)

A party tendering a traverse admits all
facts which he does not traverse - he
on his part may also use a protestation
to avoid his being concluded in any
subsequent controversy, & in this case
then 'untraversed' allegations are admitted
only for the purpose of the present suit.
2 T R 441. Law, 141. 3. 2 Burr 1023. 5 Alod 130.
Litt 1192.

A protestation is the only mode of denying
those allegations which cannot be traversed.
Plowd 276 (4). Law, 141.

A protestation is never the subject of
a demurrer for it is no part of the
pleadings. Comyn & Pl. n. Law, 142.
Law, says in good a protestation can
in no way avail the party protesting
if the issue joined is found agt. the
one who protests, but the issue cannot
affect the protestation, Law, 142.

if traverse can be taken only on a
 material point and if taken on a
 immaterial point it is demurrable
 Comb 32/ 2d and 5.20
 6 Co 144

If however the party to whom an immate-
 rial traverse is tendered it tender he
 must by 27 Cl. & 4 Cl. be specially
 seen at Ex. 1 Saund 14. 4 Cl. 2 Co 207. 4.
 4 Cl. 319 a, b. Stra 194. 2 Co 145. 1 Cl. 44:5.

no traverse can be properly taken only on
 an immaterial point, a point may be
 material but not immaterial, matter of
 law cannot therefore ever be traversed
 1 Saund 23. 4. 2 H Bl 182. Cro & 201. 109.
 Comyn & pl 9 14. 11 Co 184. 2 Saund 159.
 2 Co 22:3. 2 Co 144.

is a per and 'a virtual caging' of not
 traversable 1 Saund 23. 15. 2 Cl. 113. 2 Cl. 400
 11 Co 60. 2 Cl. 607.

Yet the Def Plt may deny the
 existence of the per and Ex. 1 Cl. 113.
 1 H Bl 376-409. 2 Cl. 182. 4 Bl 8-68-68.
 1 H Bl 376.

A traverse must be taken on a single point i.e. on one single ground of claim or defence, a traverse taken on one more than one point is bad for duplicity, but the traverse may include several facts if they all go to one ground of claim or defence.

Bar 320
1 B & P 80
8 Co 66.
Bull 43.
3 Lev 40.
4 Wm 75

But if there are two distinct points both of which are material in the pleading, one on the other side either may be averred.

Wes 24 (1)
1 Wils 338
count
pl 410.

Nothing except what is already necessarily implied in the pleadings on one side can be denied by the other. Suppose in debt on a promise required by the st of parties.

Bar 312
24. 206.
2 Bar 10
114.
Lalk 224
count
pl 41. 5.
2 Wm 69
2 Wm 70
4 Wm 85-75.

But a traverse taken within the rule is ill only in special damages.

4 B & P 75
12 Reg 216
Wm 112
24.

2 March 206 But an ignorable point appearing in the
 4 April 221 pleadings may be traversed that he is
 common & alleged by name of a late to, the in
 16 July 11. quit it is held when a traversable
 17 Oct 109 fact is that alleged to answer
 18 Jan 31

18 Oct 104 Where a party justifies a denial as to
 18 Oct 68. any part of a cause, a defence
 4 Sep 415 & he traverse the residue his traverse
 18 Sep 222 must be consistent with the part
 18 Dec 24. unanswered,

5 Dec 206 If a traverse is just. if is laid on the same
 3 March 42 day as is laid in the de. then is
 2 May 25 no need of a traverse of price & value
 21 Feb 24 time for here the traverse is prima
 1 March 4 facie identified & the de. may
 5 Feb 64 now appear if he insists on a subject
 a price traverse.

It is justifiable to plead in a letter
and from that alleged in the letter
he did add the same est cadem transcripts
but in the last case there is no receipt
in the same est, &c. &c. 34:5
2 found 5/11 2 on 25/11

It traverse will be found on one side - Hb. 104.
always obliging the opposite party to
join in it. However the inducement
traverse go to the same point, now
they go to diff. points it is otherwise.

In many cases there is no need for an
inducement in other it is indispensable
I an inducement is sometimes necessary
as to prevent a negative proposal.

It is important to maintain the
position of a party in a trial.

It is when the inducement is necessary
to diff. points, the inducement is
indispensable to make out a complete
defense.

20 cont 32 The inducement must consist of identifiable
 20 & 33 matter, for where the inducement &
 21 & 68 traverse go to the same point the traverse
 is a conclusion from the inducement
 the inducement must therefore consist
 of identifiable matter in the traverse and
 not & where they go to different points
 the inducement is traversable &
 therefore should consist of identifiable
 matter.

A traverse going further the terms of the
 allegation traversed. But a traverse in the
 21 & 120 matter is not always right, it is left plain
 21 & 319 release given since the date of the writ the
 22 & 23 P^l sh^d not traverse in the words of the
 24 & 25 plea for if he sh^d the traverse is tant
 26 & 27 to a negative pregnant. The traverse
 28 & 29 sh^d be with an inducement or P^l
 30 might deny the release made at point,

If an actⁿ is not for money payable 2 Ban 944
 on or before a given day & the Deft pleads 2 Wils 173
 paym^t before the day the Def must 2 Lard
 traverse paym^t on, before or after the 4 Bac 11.
 given day. then it perfectly anomalous Sta 444

But when money is payable on a particular
 day the Deft pleads paym^t on that day 2 Wils 15.
 the Def must deny paym^t in manner & command
 form & then add matter to say the pie 37
 day is far as it is material, 2 Ban 944

Where money is payable on a particular
 day the Deft the he actually paid
 the money before the day sh^d plead
 paym^t on the day & it w^d be immaterial
 to plead paym^t before the day.

Concord
 p. 1
 Jan. 12,

Duplicity

is it 304
3 Dec 24
4 Dec 24
Hend 306
Tack 142
1 to 110
Holt 295

is a fault in pleading because
it leads to prolixity & embarrassment.
A plea is duplicitous when the plea
consists of several distinct & independent
matters going to the same part of
the claim or defense or to the whole
claim or defense.

In the 1st place to an action of
trespass a just & release to the same
trophies, there is no pleading, in fact
of duplicity.

But the giving of dupli answers to
a 1st part of a demand is not
duplicity. See Holt 304 & 305 & 306 & 307
Holt 308

And if there are no more facts in an
action each may plead for himself
one defense for the whole & another to
a 2nd part. Holt 308 & 309 & 310 & 311
Holt 312 & 313 & 314 & 315

But when the one demand is to settle an
account they cannot come in by pleading
one, they must state separate defenses. In
that cannot come & both plead the
same story for they cannot be injured
by pleading. Holt 316. Holt 317. Holt 318
Holt 319. But they may plead in this
one usually provided they plead some defense.

Holt 324

every plea must be single and true
connected & confined to a single
ground of demand or defense. But this
single point need not always consist
of a single fact for several facts may
be necessary to constitute one single
ground of claim or defense.

4 Bl 311

Thus, if a plea is in bar and of
arbitration, here the defendant must set
forth all the particulars of the
allegation in the pleading. The answer
made to all these are necessary to
establish one ground of defense.
1 Bar 326. 2 Bl 121. 3 Hall 41.

so in pleading, notable cause in an
action for malicious prosecution the
defendant may allege all the circumstances
which go to create ground of suspicion

2 Bl 311

3 Bl 311

4 Bl 311

and here the defendant is not
bound to allege any facts tending
to show the whole

so all the grounds of suspicion are all that
an answer may make may be specially intended
set out -

Aug 26. Put the feet dried upon a
plate & before the lamp of a
Kew 4th foot will may be dried. Ex. 2
Nov 26. Plant fine laminae too for
a spot.

right counts in a dec^l and count being
double, never make a dec^l double &
this is the case where several counts are
inserted to subjoin distinct on the
same rights & recovery, for each
count purports to be for a distinct
cause of action.

That if the Judge finds, if any one court
again after answer, the court is to hold
it after answer of action in one court.

But surplusage now makes a plea
double, the 2d treat it as if it was ¹⁸⁴⁷
not in the pleadings. By 2d & 3d pleas the 1st
paym! that he was always ready ^{20th 370}
before that time to pay. ^{4 Bar 119.}

To make duplicit in a debt it is not ^{Count 1}
necessary that the 2d & 3d grounds of ¹⁸⁴⁷
action should be independent. ¹⁸⁴⁷

He is promised to deliver to B all ¹⁸⁴⁷
the grains from his buyers & at ¹⁸⁴⁷
but an action on this promise & ¹⁸⁴⁷
alleged to a breach of the promise ¹⁸⁴⁷
that the 2d & 3d mixed with ¹⁸⁴⁷
the grain &c.

In actions on promissory notes &c. ^{Count 1}
only one breach at all could be specified ¹⁸⁴⁷
Count 10 1000 ¹⁸⁴⁷

1847
3 talk 108
1847, 267.
Hunt 14, 120

But in cov! broken the Plf at all may, ¹⁸⁴⁷
allege in one count as many breaches ¹⁸⁴⁷
as he pleases. ^{4 Bar 131.}

In Count the Plf may & always might ¹⁸⁴⁷
allege as many breaches as he chooses ¹⁸⁴⁷
if the condition of the bond for in ¹⁸⁴⁷
Count the penalty can never be recovered ¹⁸⁴⁷
& now if 5th & 6th of 1847 the rule is the ¹⁸⁴⁷
same for the most part in Eng. & Am. ¹⁸⁴⁷

1847
Comp 557.
53. R 126.
459.
1847 R 1010.

The rules of the C. I. still exist with
 Laws 27:8 in regard to duplicity in de^o
 4/24/12. But by 4+5 ann^o the de^o may with
 L. Ray 199 leave of the C. I. place as many places
 1 B. 101 as he wishes, but each place must
 Cap D 319 be distinct & single.

When a de^o places several distinct
 defenses the de^o may answer each
 separately.

In 1115 in Court a similar stat to
 4+5 ann^o was made.

Common & These statutes comprehend no other
 pl C 2. than pleas to the action. the de^o
 4/24/12 cannot make two rep^os to one plea
 & the de^o cannot make a double
 rejoinder to a single rep^o.

Grand 117 By 27 Cl^o advantage can be taken &
 Common & duplicity only by special demurrer
 pl C 39 & the duplicity must be specifically
 22 alleged in the party demurring. must
 Lalk 219 show wherein the duplicity consists,
 1178 & Bur 119.

Wig 219
 L. Ray 192
 79+
 Rev 70.

If two answers are improper made in the
reply & the deft does not know he must Went 272
again to both the answers on his pleading 4 Dec 119
will be all

In this case the deft can answer both of
the replications but each answer must be
single,

The rule requiring a special answer to
the duplicity does not extend to misjoinder
of actions

Lick 10
Ray 233
3 Dec 144
5 Dec 274
15 17
6 Dec 183

(164)

Pleadings (No 10)

It is a good rule of the Court when a party declares upon a certain plea or deed & makes title under it he must make proof of it. *Long & Peck 3 Bl. 472*

By making title under a deed means making the deed the ground of claim or defense.

This point is required that the other party may have one of it & send a copy of it to the Court may have inspection of it. *4 Bur 109-113.*

5 Bl. 222

Long & Peck

And the adverse party is presumed to be unable to plead properly with the deed & he cannot be compelled to plead with the deed where one may properly be demanded. *4 Bur 113*

But if he pleads with one he waives it.

Proof is required & required of the Ch. B. 15 is true & that is a deed, for according to the strict entry. If there be bills of exchange & promissory notes or other instruments but indirect evidence of contracts.

in making practice according to the law
 is not bound to make perfect of it
 as at the 2^d trial of the last request
 it proved the debt with a copy of
 the note

A Court must not neglect to notice
 evidence in general which contains express
 evidence, but contains no deed.

If a debt is proved by deed might
 have been assumed until such he
 who claims title under it is not bound
 either to prove the deed or make
 perfect of it

Mo 3rd Feb But when the right could not pass
 1st Mar 119 with it dead in who claims the right
 2nd Mar 143. in his proceedings must plead the
 10th and 9th dead & if he brings title under it
 5th Mar 116. he must make perfect of it.

But the the right might not right
had yet if the part leads the lead cannot
make, title under it the lead must be made
be pleaded with a part. Law 97

So a party pleads a lead, yet if he
does not make title under it he is not
bound to make proof of it, for a
lead may be pleaded as matter of
mere inducement to the claim or
defence. In it brings an action
agt B for fraud in the sale of goods
and alleges that the sale was by
bill of sale, here the bill of sale
is not the ground of claim proof
need not be made. 10k 7, 1
10k 92
10k 3, 4, 6

Where a party pleading a lead does
not make the lead a ground of
claim or defence the adverse party
cannot give any answer to the lead
because it is mere matter of
inducement. and therefore can
do him no good - therefore there
can be no recovery for making
proof.

But it is not universally true that
he who pleads a deed & makes title
under it must make perfect it.

10 Co 94 Ex & stranger may make title
114394. under a deed & yet he need not
3 Dec 10. make perfect for the deed may be
sufficiently presumed not to be in the
stranger's power. Ex Best pleads
a deed from A to B & that the
deft as agent to B did the
wrong complained of. &c.

Co Litt 225 And this rule holds, quite as the
5 Co 75 phrase is of any one who comes in
4 Dec 10 by operation of law, thus tent in
Jenk 305 down may plead conveyance to her
deceased husband as a ground of her
claim & yet she does not come in
as party to the deed but by opera-
tion of law & therefore she need
not make perfect.

But this rule is not universal, ex-
tent by the country must plead
the conveyance to his wife
with a perfect for he has a right
to his wife's title deeds during his
life & may obtain them from the
heir at law. 10 Co 94. Co Litt 226a
& Dec 10.

That prior to and most regularly
make proof of them in all cases ^{containing}
when the original part is by ^{311.}
bound to make proof, & here at 1044-4.
Law. & Ex. 7 Bur 411.

But a party pleading a record is never ¹⁰⁴⁴⁻⁴
bound to find it with a proof, ^{but 102.}
for a record is never private property ^{Ball 23.}
& then one not at the control of ^{Field 529.}
any person whatever. ^{Coitt 225}

Other testamentary must be pleaded with ¹⁰⁴⁴⁻⁴
proof, these are not records, they
are subject to the control of the
admiral.

If a deed is lost by time or casualty ¹⁰⁴⁴⁻⁴
it may be pleaded a title made ¹⁰⁴⁴⁻⁴
under it with proof, but he who ^{37 R 157.}
thus pleads a deed destroyed must ¹⁰⁴⁴⁻⁴
allege specially the loss & a ¹⁰⁴⁴⁻⁴
pleading will be ill, 2 # Be 243.

200 203
Field 529.
Hill 10.
Sith 101

anciently which in such cases may be sought
 Madd 246 by bill in equity & now where the
 13ab 14:15 party pleading a deed wishes to obtain
 2 Broch 218 a disclosure.
 45b 109.

So if a deed pleaded by one party is
 10lat 55 in possession of the adverse party he may
 be. make this an excuse for not pleading
 with propriety.

He who pleads a private deed or letter
 patent is not bound to make proof
 for these are records. Bouy 476.

1 Saund 94 If in case of a bill to the plaintiff make
 1 Mil 16 title & proof the opposite party
 32 R 153/4 may then insist on aver & the
 pleader in such case must fail
 here is however a remedy for
 this under the act of amendment.

1 Root 566 In Court proof is never necessary for
 on the issue that you may be awarded
 whether proof is made or not.

Formally the mission of perfecting
matter of instruction but now by the
act of amendment it is not a
special demand on 32. It is 30.
to be 27. & the 1st. part of section

Perfect being made the perfect party on 28th day.
Demand to have the same and to demand 4th day.
a copy of it to be made out by a 4th day.
perfecting party at his expense. 76

But the whole is finished with perfect 4th day.
and the perfect party making amendment 4th day.
to be not made under the perfect
is in the case & the opposite party cannot
demand more. 4th day. 76
2nd day, 195.

The granting of one thing is not a lack of
right demandable is not error but demand
refusing to grant it when it ought to
be granted is error. But to take advantage
of this error the party making amendment
his prayer on the record & the granting
the prayer is so far regarded as a plea
that the other party may demand a bill
to it to

Heund 964. The party to whom an is entered may
 Sack 495. also file a bill of exceptions stating
 Colod 20. the facts,
 So. Kan 409.
 Can 410.
 1 Blue 325.

3 Blr 44. In case obtained the party obtaining it
 Colod 22. may enter the plea on the record and obtain
 4 Dec 113. a bill of exceptions & any condition
 Lane 404. to which the opposite party has not stated
 in his pleadings. He may take
 advantage of any variance, defect
 illegality & appearing from the doc
 or for a variance the best may demand.

20 Feb 742. If the insufficiency or illegality appears
 9 p Lane 44. on the face of the deed the best may
 demand.
 That if there is any extrinsic matter of
 defense the best may allege this in
 his plea.

Heund 96. If the party obtaining copy of the
 316.7. deed soils it fraud the adverse
 4. R 370. party may sign judgment as for want
 South 306. of a plea for the party craving
 common & an implied undertaking to recite it
 12 p 1. truly if at all & this breach of
 18 Dec 227. his implied undertaking answers as
 plea. Or the best may have the
 deed enrolled in his copy by a proper
 officer of the Ct. & then demand.

Departure is a denunciation or a former claim
or defence, for another distinct from & not fortifying
it, 3 Be 310. Co Litt 303. 4. 2. 4 Be 280. Bul 17. Stra 422

Ex If matter first pleaded is of Co a subseqt.
plea of a particular custom in support of the
first claim or defence is a departure. Lev 51.
1 Keb 469. 512 4 Bac 123.

So when the first plea asserts a co right & a
subseqt plea alleges a stat. right this is a
departure,

o If one sues in common form for a trespass & lev 48
to cattle & the defence is that they were taken 4 Bac 123
damaged peasant reply that they were driven
out of the county by dist is bad for this is
a stat offence,

✓ If one claims under a stat & deft replies a
repeal of it Plf may reply another stat
making the first perpetual. for the 2^d stat
merely continues the operation of the first, Lev 51
4 Bac 123

If Deft pleads performance of covenants & Plf Co Litt 304
shows a breach & Deft cannot reply that he
was prevented from performing by the Plf. Sid 10.
4 Bac 123.

✓ So one cannot plead infancy & afterwards reply that he
is a release,

But varying in an immaterial point from
 a previous allegation is no departure as if
 one declares on a promise 10 yrs since & to it
 of limitations pleaded replies a promise
 made within six years.

Salk 223
 10 Mod 343
 6 Mod 115

3 Bl 311 When the dec^r alleges a cause of action in
 24 Bl 555 genl terms & an evasive plea is made & the
 Bull 17 Plt in his repⁿ makes a more particular
 3 Mod 110 assignment this is no departure.
 1 Saund 286

Departure is bad on genl demurrer, Salk 221
 Raym 22: 94 Stra 422 2 Saund 84 x 21 v 46
 1 Ch 623. Bro C 165 a 288. rule doubted
 1 Ch Pl 623 (n) & see Comyn & pl f 10. 1 Saund 117.

But the defect is aided by verdict 1 rev 110
 2 Saund 54. Ray? 56. 1 Ch Pl 623. Fidd 689.

But the matter alleged in the 2^d plea must
 be suff^r a judge will be given agt the party
 departing as if rejoinder is willing to
 pay.

Why will not a demurrer aid the departure It
 is said that a demurrer confesses what will be
 found on a verdict but a demurrer never confesses
 what is in question the party has no right to
 make any second plea 1 rev 110, 1 rev 50.

✓ A Demurrer is a denial of the sufficiency of the facts pleaded in law, & confesses the truth of the facts & refers the effect of the alleg^{ns} in law to the decision of the Ct. 3 Bl 314. 1 Co. Litt 71d. 406 233. Lams 167: 9. 4 Bac 129. 3 Wils 292

✓ A traverse denies the truth of the allegations, a demurrer denies the law,

✓ A demurrer may be taken to any part of the pleadings Co. Litt 72a 5 Mod 132,

✓ A demurrer must admit all the allegations even those ill pleaded

But a demurrer will not admit so as to estop the party pleading in a subject such insufft facts.

✓ Since 4 toth Jan it may be laid down as a genl rule that all formal defects are ruled by genl demurrer. the Ct was left.

Lams 167

40650.

232

1 Wils 248.

✓ If a party alleges a fact contrary to matter of estoppel appearing on the record a demurrer does not confess the facts.

Lutk 215

40656, 233

2 Lams 279.

(176)

A demurrer never admits ^{contradicts that which} a fact which is made
3. Rev 124 certain by something on the record
Cros 35

Laws 168.

A demurrer never admits a fact which is
impossible 1 Sid 10. Laws 168.

But this rule will not extend to facts
which are fictitious, *Cogswell v. B. & C.*

A demurrer never confesses a conclusion of
law, 4 Hob 56. 4 Bac 131.

1 Show 213. There can be no demurrer after issue joined
4 Bac 54. But merely losing the issue does not
exclude a demurrer.

3 Bl 314. A demurrer tenders an issue in law,

Co Litt 712 4 Bac 150.

126 (a)

Salk 219. This cannot be a demurrer to a demurrer
Laws 172 the 2^d is a discontinuance

2 NR 53. Comb 506

Demurrer as of the law and evidence in 1857-
demurrer not appearing special any particular
cause of demurrer is core

✓ at special demurrer is now made necessary by 1857, same 1871
by 1857 in many cases in which at the general 1857
demurrer has been left at the special 1871.
demurrer, now new necessary, the they are at 4 Jac. 32
in a present use same 1871.

✓ To constitute a special demurrer the cause of 1857
demurrer must not only be alleged but 1857
specifically alleged in demurrer again, for 1857-
cause that the defect is double multiplicity
& wants form this is not special that
in which the duplicity exists must be
stated.

✓ as Coke lays it down in a good rule to 2 Buls. 25
demurrer shall be in all cases where there 1857-
is any 'double' matter the mistake is in
form a substance this is undoubtedly
the proper course.

✓ as a special demurrer reaches all points 1857
which a general demurrer does not reach but 1857
defect in form except in demurrer being so still be
can be reached only by special demurrer 1857
Compendy
p. 5. 6
1857.
1871.

(178)

But it is not necessary to demand
1015 specially to a defendant, since the
3371 defect is merely formal, the it's do not
lack 194 need to place in abatement.

Sidd 815.

33R 186.

1 Ch 9 456

2d 679.

6R

4 Dec 1841 The it's & Chy require courts that for all
formal defects a special demand shall
be necessary, the it's of other cases, 2,
Chy & adds a great number of authorities
citations.

Common 8 But these stat's do not extend to crim:
appeals, indictments (& motions on
1 Ch R 642 penal statutes) presentments & informations.

4 Dec 1841 extends the rule to motions brought
on penal statutes 1 Ch R 642.

In all pleadings there are two requisites:
1st that the matters be set out in law. 2d 406232
that these facts be pleaded according to the
to the form of law in the first case 406232
the demurrer may be good in the second case 406232
a special demurrer is excepted 100

If then there is a total want of substance
as standing for calling one a wife a good Cause
demurrer is sufficient as in Brown Ref. 26. 3 BL 34
not state property as in the paper paper 34
the demurrer may be good. 100
406232.
100. 292 300.

If a party pleads any thing which is apparent
from the face of the record to be untrue 100
from pleading a good demurrer to the same 38.
plea is good if the fact is material 40. 16:70

A special demurrer reaches no other form
defects than such as are specially alleged 100
for cause of demurrer 100

Judgment given on a demurrer to a de^c
 2 BkR 52 or to any of the pleadings to the
 6 Co 7. action of trial & they shall be
 Pak 96 concurred in any subject action for the
 1000 100 same cause as a judge rendered on a
 1 Ch R 96 verdict.

(H) But if Plt fails because his de^c is ill
 or demurrer because he is misconceived
 his action he may bring a subject
 action

(H) So if plt fails on acc of an omission
 2 Saund 47 to a material allegation he may
 1. bring another action
 vide Evidence

4/ 600 20
 Cro E 60 18
 3 W. 6 24

and can be brought after the judgment
 is rendered upon a demurrer the plf
 may bring the same action again

Pleadings No 11

Set demand reaches back thru the whole
road & attaches on the part substantive
direct. Comen & al. 7. Ask 500. Demand 1000
4000. 10000. 20000. 30000. 40000. 50000.
Ask 400.

But to this now there is an exception or
rather an class of exceptions. By de-
clarations made by the parties in
the answer etc & the facts stated in
the bill & the bill of particulars. With
standing out any doubt which is for
in these cases the true cause of action
now appears to be the declaration
so that the right in all such cases
is to be considered as a part of the
declaration a supplement to the
bill & to the bill of particulars. See
100 / 133. 221. 2. Bill 44.

If of several pieces in law one is deemed
to, & is adjudged good then all the other
will be void the bill is entered to judge
1. Demand 10. 2. Bill 747.

In civil cases a party who is a defendant
 follows the nature of the pleading,
 1. Hank 300 demanded to know what there is in
 + Bu 132 on demand to a dilatory plea the
 judge is not final but here in
 case I plead to the return

And the rule is the same in criminal
 No E 190. cases if the offence charged is less
 116000. than felony. But in criminal cases
 2. Hank 334 if a defendant is charged the prisoner
 + Bl 334.1. may still plead if the offence is a
 2. Hale 143. felony or a capital offence, opening
 257. 315. the house divided

Demand to evidence

In many cases where the issue is Cost in fact on the part of the party who takes. Hall 217 the case from the way to the it is known demanding to the evidence is to the 4th R. 36. facts shown in evidence for the issue always admit the facts to be true.

This demand to evidence must be taken Root 40 before the party demanding has shown any evidence on his own side.

Again the demand must be taken to the whole evidence exhibited on the other side.

Again a demand to evidence can only be taken to the evidence of that party who takes the more preponderant on that issue. Ex. 30th p. 10. the plaintiff must take the more. the Plf cannot demand to the def's evidence for the question cannot be whether the def has proved himself not guilty.

The relevance of evidence is always a
 question of law but the relevancy being
 24 RLR 205: established the issue is to determine
 how far the evidence supports the issue

to demand to evidence which is relevant
 to the issue you have asked that
 24 RLR 205: evidence may be is a desperate effort
 to demand, the demand must be overruled.

Evidence is always relevant to any
 issue which it conduces, in any way
 to prove however slight the degree,

This demand then puts an end to the
 issue of fact & refers to the law & the
 application of the law to the facts
 shown in evidence.

The principal advantage of demanding
 to evidence is, to place the evidence
 on the record & then to support
 it.

This demurrer admits the facts shown
in evidence by the adverse party 4thly
but denies the legal sufficiency of such
those facts to support the claim 2dly
If to debt on bond non est factum
is pleaded & the evidence offered of
the execution is hearsay now the debt
shd demur if he wishes to bring over
by demurring he admits that the witness
has, I'd say that the debt executed
the bond

In the nature of the thing then the fact
wh the witness is testifies to must be ascertained
ascertained before any question of
law can be raised.

The party demurring must then in
certain cases make certain admissions
wh are indispensable for the purpose
of raising the question of law

When the whole evidence exhibited is
 5 Co 104 written the opposite party may demand
 Cro 271 & the jury must join in demurrer or
 752 waive the evidence, for there is no
 200 danger of mistake,
 3 Bl 372.
 Bull 315.

But how far a party exhibiting proof testimony
 is bound to join in a demurrer to it has been
 made a doubt, in Att. Gen. v. The N. York
 100 7512.

But now the law on this subject is settled
 200 112 & that the whole testimony taken on behalf the
 party may be rejected & demurrer & join in
 demurrer to it.

52 If the party exhibiting the proof produces
 attached to prove a definite fact the other
 party may admit the fact & denial &
 compel the other party to join in demurrer
 or waive his evidence 2 Bl 200. Allen v. B.
 24 & 200 make the rule upon the 1st
 after evidence to prove the fact & deny it
neglect. If the Deft will admit on the
 record the fact of neglect he may demand

If the parole evidence adduced is
certain the opposite party may by confessing
that evidence is the word to be true, 2A B. 112
demand & compel the other to join

By 'certain' is here meant direct
as contradistinguished from circum-
stantial

If the evidence produced is inalter- 5 C. 104.
minate & true it is not certain & positive 2 H. B. 207
the opposite party cannot demand to it Hall 313.
with admitting it to be certain &
determinate as well as true & unless
they admission is made the party offering
the evidence is not obliged to join in
demand for they will be referring the
matter of fact to the jury.

Ex Wilmsham can't believe the fact is so
'according to the best of my recollection'
it is so &c here the party demanding
must admit the evidence as if the
testimony was direct.

If the evidence is circumstantial the party demanding must admit any fact & draw conclusion with the other party drawn from it & with the evidence conduces in any way to prove Long 114. 127. 9. 2 H Bl 207. 209. Bull & P 313.

If the admission is not made the Ct. can give no judgment upon the demurrer even tho the other party admit the Ct. in such case must render a verdict for the defendant Bull 313. 4 Bar 127. 2 H Bl 209.

The point in issue is on a demurrer to evidence is whether the evidence is sufficient in law to support the issue in fact.

Where in a demurrer evidence no advantage can be taken to the pleading out after the demurrer to evidence if overruled advantage may be taken to the pleading by motion in arrest of judgment & this motion will then stand on the same ground as a motion in arrest after a verdict so that whatever is ruled to be necessary is cured by demurrer overruled.

The right of demanding to evidence is
not strictly ours the party whose
evidence is demanded to, may always
pray the judge of the Ct whether he
ought to join in demand & the
Ct may in their discretion refuse
to receive such demand

Bull 13.4
4 Dec 130
2.4.15.105
Allright

On demand to evidence & answer in
it the usual course is to dismiss the
jury instantly but the Ct may
direct the jury to assess the damages
conditionally.

Ex 2.43
as Rando.
Flora 4.10.
Bull 514
Calk 24
Dag 2.2
C. & R. 200

If a party demanding to evidence is
prevented from going on in his demand
by the Ct the party offering to
demand may file a bill of particulars

9.20.130
2.4.130
2.4.130
4.1.130

The whole proceeding in demanding
to evidence is under the control of
the Ct as in entering the evidence
on the record, the admissions &c

2.4.130
2.4.130

as to the form vide

2.4.130
2.4.130

(190)

4. A court, except in the case of a court
moot & dead, is one in a position for
134 110.13 to perform its ordinary duties in
the case then before. It is fine after
noon in fact found & verdict
But such a motion may be made after
a report on a default verdict, usually
the best to be then. So after dinner
to dinner, reached at the 12th day 108
113. A after dinner to dinner
dinner and not left.

1. The principle in the case of a court
is that the court is the 2d of a course
of law from the facts appearing in
the record. In the case of a court, the
record is the only one to be settled
to have been. It must have it.

3. Bisho. V. ... in the motion of an
... to have for the cause. A court
judge must be something with appeal
in the face of the record.

✓ If the defect is in the plea or answer obtained a verdict disposes in good disposal defense to the action the Def is 2 Bl 395 his defect is gone may answer judge

✓ To determine what defect in cause or quest of judge there may be to be shown after a verdict judge may call on be assisted for an error without 2 Bl 395 answer a judge in presence of the verdict error.

✓ If the statement of the Def tells a cause of action & the statement only is defective the defect is some good verdict Ex. in the case the Def does not allege a certain sum in the defect is in the manner of stating the trespass Long 551 or on Black 305 Bull et 320 Comp 125 Long 2 & p 17 stra 1028 119-174-125-176

✓ But if no cause of action or a defective one is stated the fault is not cured by verdict & a motion in arrest will prevail. Ex no consideration in disposal Long 551 3 Bl 394 119-174

(192)

4. These rules apply as well to the defendant as to the plaintiff. In a suit for damages not payable to the plaintiff but to a third party, the plaintiff must show that the defendant is liable for the damages. 12 R. 50. 3. 2. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

12 R. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

12 R. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

12 R. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

12 R. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

12 R. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

To determine

After verdict the Ct must presume that
those facts which are omitted & which are necessary
inferences implied from the facts which
are stated & found,

or in other words the Ct must presume every
fact which is necessary to warrant the
the finding of the jury that the fact
in the declaration is true.

Ball 5201

Lang 651

13 R 145

Hand 222

to warrant the

25 R 145

Conk 122

Wig 172

Str 1023

by Plf declares on the grant of an incorporated
her^t with alledging that it was by deed Talk 661
& the jury find a general verdict in favor 130.
of the Plf the Ct must presume that
the grant was by deed for the Ct must
presume that the jury found a grant
& by law there can be no proof of
a grant except by deed.

50 R 287

73 R 511

120 541

28 R 110

13 R 145

13 R 317

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

10 R 301

(194)

Nothing can be presumed in support of
a verdict except those facts which
12K 105 are alleged & found & such as are
necessarily implied from the findings
& those facts which are alleged.

If the cause of action then appears to be
defective then the verdict cures no
defect in the pleadings Long 688. 312ur
1728. 2 Bl 394.

So if any material fact is omitted
& which is not inferable from the
findings of the facts which are alleged
this fact can never be presumed.
Salk 365. 12K 145. 3 Bl 395.

By in a pump! a court broken the Plt
does not allege the performance of
a contract precedent the Ct can never
presume that this condition is
performed for the finding is merely
that the debt promised & has not
performed the jury may rightly in
this case find for the Plt with findings
are things more than the promise &
breach.

So if notice to the indorser is
not alleged in real verdict says
not cure the defect.

Long 557
24
2 Co. 47
15 R 547
82 R 1278
72 R 115
42 R 472
2 AB 574
2 Bungeo

So action is brought at for mass which
done by his dog & the last remedy to
state the substance & a real verdict is
found in favor of the plaintiff then the
defect is not cured for the matter
fact does not follow from the finding
of all the facts alleged.

Lack 52
320 R
Long 558

and the it can never presume any fact (Ventr 17)
omitted merely because that if it
is necessary to enable the plaintiff to
prevail in point of law. Once
indeed the it is court determined that a verdict
is considered in apt might after verdict
be pronounced.

(196)

of motion in arrest of judgment after
default operates precisely as a confession
demerit, nothing is ruled by default
except that which will be found by general
demerit. 2 Bur. 400. 2 Stra 1271. 1 Wils 171.

Again the Ct can presume nothing in
favor of the Plaintiff after a
special verdict, the Ct can presume
no material fact not found by
the special verdict. for the verdict
purports to state all that is
proved to the jury.

Pleadings et. 12.

There are cases however in which parties
will not be arrested for the smallest
defects & this happens where the first
radical defect in the pleadings is
on the side of the party moving in
arrest. A judge is to be entitled
on the face of the whole record.

40656

149

41 ac 131

5 Co 120.

153.

22d May 1610.

9 Co 116

5 Ver 244

When judge in possession of a verdict is
arrested judge in chief not the party. 40656
who obtained the man in some cases. 4 Co 110.
be given this is called a judge. 6 Pro R 517
verdicts non obstante. 1 Ch R 634.

And this point is given where from 406194.200
the whole record is of property. 406194.200
that the party arrested is judge. 5 Co 120.133
entitled to judge. If the plea is wholly
insuff. verdict for. If the Deft may
arrest judge & judge will immediately
be entered up for the Deft. here a
repleader w^o be of no possible use,

(141)

✓ If some is taken on immaterial point
2 Dec 1894 when there are material allegations
concerning which might have been traversed so that
he & H. the St cannot disprove who ought
Bancroft to have justly. Judge may be asked
per se & a replication will be awarded,

18 Dec 1894

18 Dec 1894

18 Dec 1894

21 Dec 1894

5 Dec 1894

2 Dec 1894

2 Dec 1894

2 Dec 1894

18 Dec 1894

18 Dec 1894

18 Dec 1894

18 Dec 1894 If that of a plea is wholly insufficient & the plf
18 Dec 1894 traverses a part or the whole of it & alleges
18 Dec 1894 a verdict judge cannot be awarded & no
18 Dec 1894 replication will be awarded for it appears
18 Dec 1894 in the face of the record that no traverse
406 (1894) can be material in this plea 18 Dec 1894
200.

18 Dec 1894 A replication is now awarded for a defect
which cannot be cured by any manner of
latitude given on it.

18 Dec 1894 And in this case in which the plea
in law is wholly insufficient if the verdict is
in favor of the deft judge will be awarded
& given for the plf verbatim non obstante
here it is to be given to award a
replication,

In a replacer under the pleadings
begin answer & regularly at that step
in with the pleadings time of first
of Decr 1000 & the plea in bar give
the plf takes issue on an immaterial
part of the plea & verdict is for the
plf, the judge is asked if a replacer
awarded, the plf must make a new
answer to the plea, 8 Bl 295. 1 Bur 501. 6.
2 Saund 319. 2. 2alk 579. 17. 216. Ray 404.
3 Keb 504. Comp 510.

In two authorities it is said if the
decr & plea is ill & an immaterial issue 2alk 579.
is taken on it the replacer commences 4 Mac 116.
with the decr but I cannot see how
in this case a replacer can be awarded.

It seems however that where a replacer
is awarded it is permitted to either
party to amend his pleadings, but
the rule cannot go further than this.

Oct 1842. A copy of the minutes of the
 court in which the case was heard in favour of the
 party who tendered the immaterial
 copy 300. 1 Jan 1843. 74 Dec 1842.
 Comptrolr. 1842. 2 Jan 1843. for the
 court in which the case was heard the immaterial
 copy.

2 Dec 1844. In some cases an issue of point may be
 decided by the court - if found in the affirmative
 Comptrolr. 1844. decides now if verdict is not as
 4 Dec 1844. decides the case then will be no
 arrest of judgment & no retrial.

20052 Oct 1842. A copy of the minutes of the court in which the case was heard in favour of the party who tendered the immaterial copy 300. 1 Jan 1843. 74 Dec 1842. Comptrolr. 1842. 2 Jan 1843. for the court in which the case was heard the immaterial copy.

If a replacer is awarded when it ought
to have been denied or vice versa it is
error. 2dalk 579. 1 Ch R 633. 2dalk 2. Ray 27
152.

I again think can be no replacer after
a verdict or judgment for one or
party is out of it for some purpose
except to move in arrest of judgment for
a fault in the verdict or judgment.

At C & a replacer was sometimes
awarded before trial but now since
the Act of 1841 in such a replacer
will not be awarded until after
verdict for the C will not be awarded
before having determined whether a
verdict will aid the issue or not. 1 Ch R 604
605 2dalk 2
3dalk 2.
1 Ch R 136.
2dalk 37.

A replacer is never awarded upon a
writ of error. the time for a replacer
is over after judgment. 2dalk 315. 2dalk 2
2dalk 102. But if the case is not yet
judged the time is not yet over.

1. ad. ma. be musta p. d. in the
 subject upon the readers are
 120008 is musta find on part of the
 13 Ray 1021 material fact in the plan
 14th 144 1000 1000 1000
 1014
 1014 1014

1. ad. ma. be musta p. d. in the
 2 Ray 1021 find on the readers are
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014

1. ad. ma. be musta p. d. in the
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014

1. ad. ma. be musta p. d. in the
 1014 1014 1014 1014 1014
 1014 1014 1014 1014 1014

I don't a verdict, nor find all that is
material in the case it is not material
in finding more. Co. 15. 20R 113. 176Bc 43.
5th Dec 29-5.

If the jury also creates damages, then
the bill demands the right may move
in arrest but the bill by reason of
the damages, on the face of the record
may present more & take judgment for the
damages. Co. 15. 20R 113. 176Bc 43.
Exp & 304. 5th Dec 195. 272.

It seems that if the jury find a verdict
on the count, the defect that they
may be officers & the party in the
first demand moving.

If the plaintiff demands more than he is
entitled to receive he is entitled to receive. 4th Dec 26
a verdict is given for what he
demands. 20R 113.
if the plaintiff will not be the word
cannot be. 272.

In the year 1811 a great quantity of
 ships made a capture from the coast of
 Africa and were not bound to the conclusion
 that they were by the fault of the
 4. 533 6. 5 Bar 210.

Doug 302. When a ship is arrested for an defect
 18K 564. in the ^{redist.} ~~handing~~ a vessel de novo is
 awarded
 15 R. 508 532 Stra. 510-15-1 Lev. 134
 2 Hawk 627 Doug. 703

A court judge has been arrested for
 intrinsic causes, which are not upon
 the record by the testimony offered under
 the motion in arrest of Ex Misconduct
 183. 184. of the jury. asking the opinion;
 if either be, would there be in Engl.
 legal causes of new trial & are there
 when has been a practice in Engl. to
 arrest judge for misconduct in jury
 Bar 288 290 292 Stra 642 1 Freeman 79.

In an act of judge for defects in the
pleadings no costs are usually allowed
on either side for the right the have
demanded. Rule 5 of 1. R 267. Comp 407.
Stra 617. Cal 100. 330. 1. 1. Root 64. 72
572.

If a motion in arrest is, in fact,
overruled & the party overruled brings
a writ of error the same rules
respecting costs prevail & shall apply

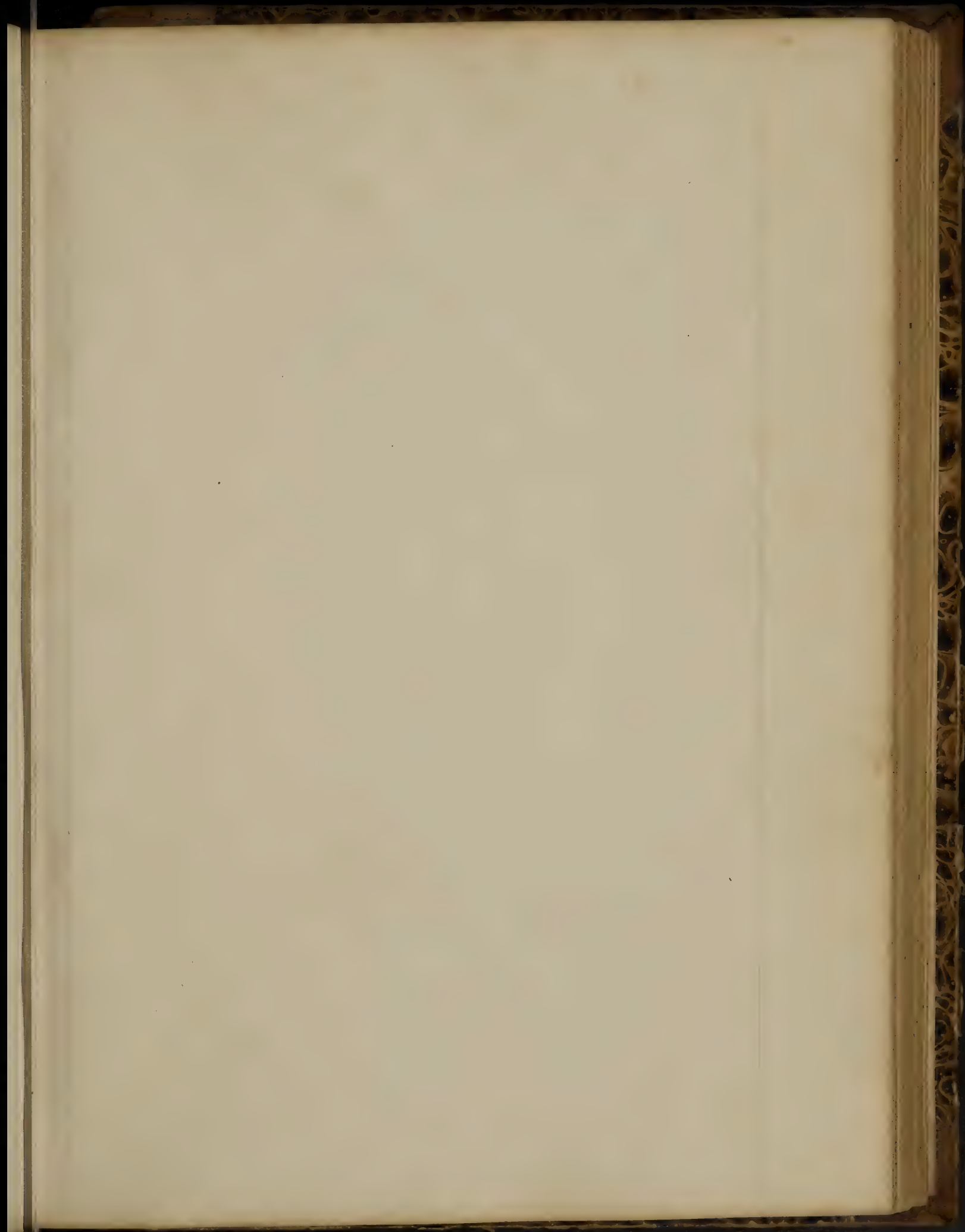
But they will hold, only when the
motion is for a defect in the pleadings.
for in other cases, there was no opportunity
to take the objection earlier than he
does take it.

Single motions in arrest are made
within the four first days of the term
after the time R 345.

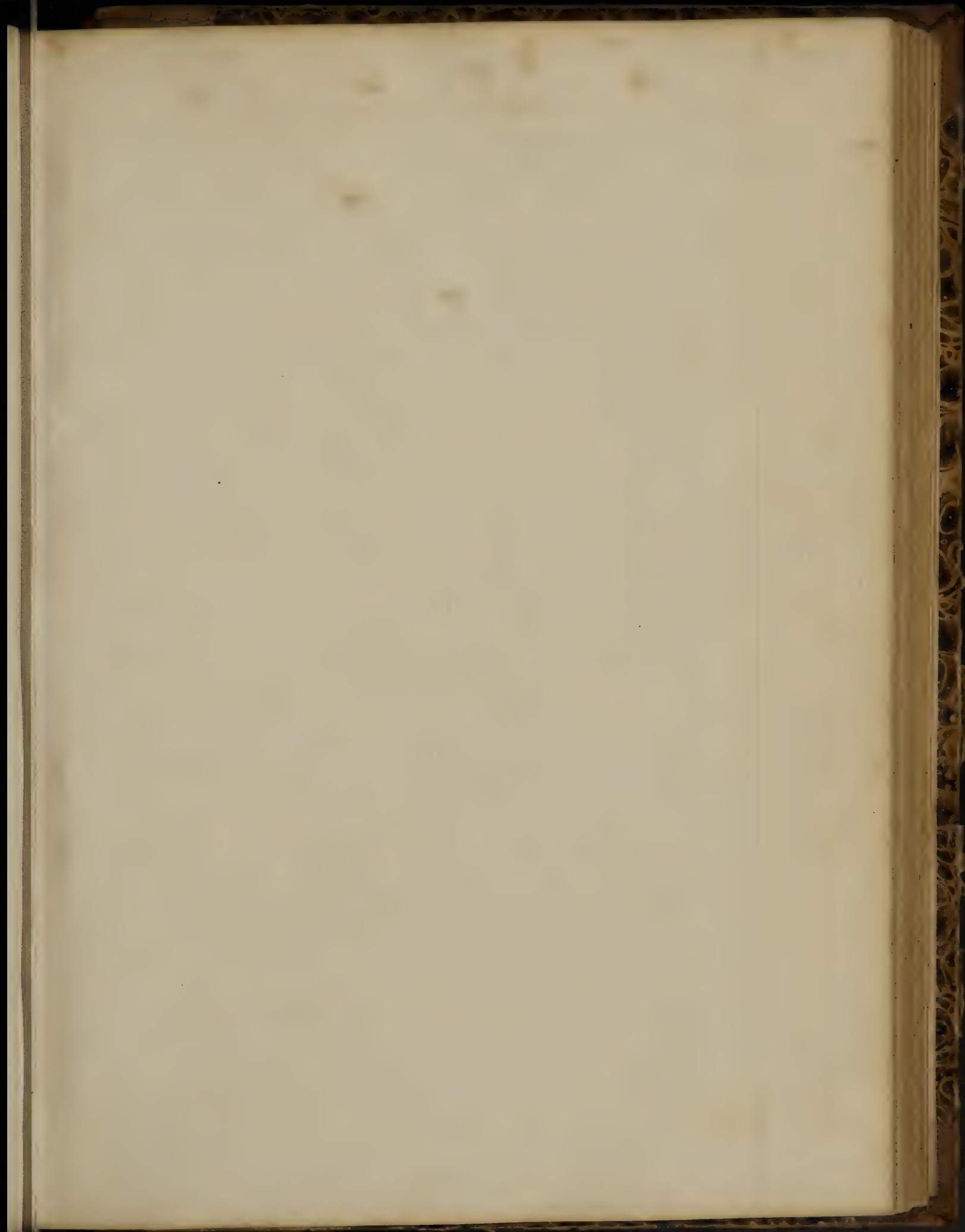
In court the motion is made on the
record being accepted by the c. & must
be reduced to writing & handed to the
opposite counsel within 48 hours.

Root 5. 2
R 345
3 Day 24
36 App 4
Nor page 11

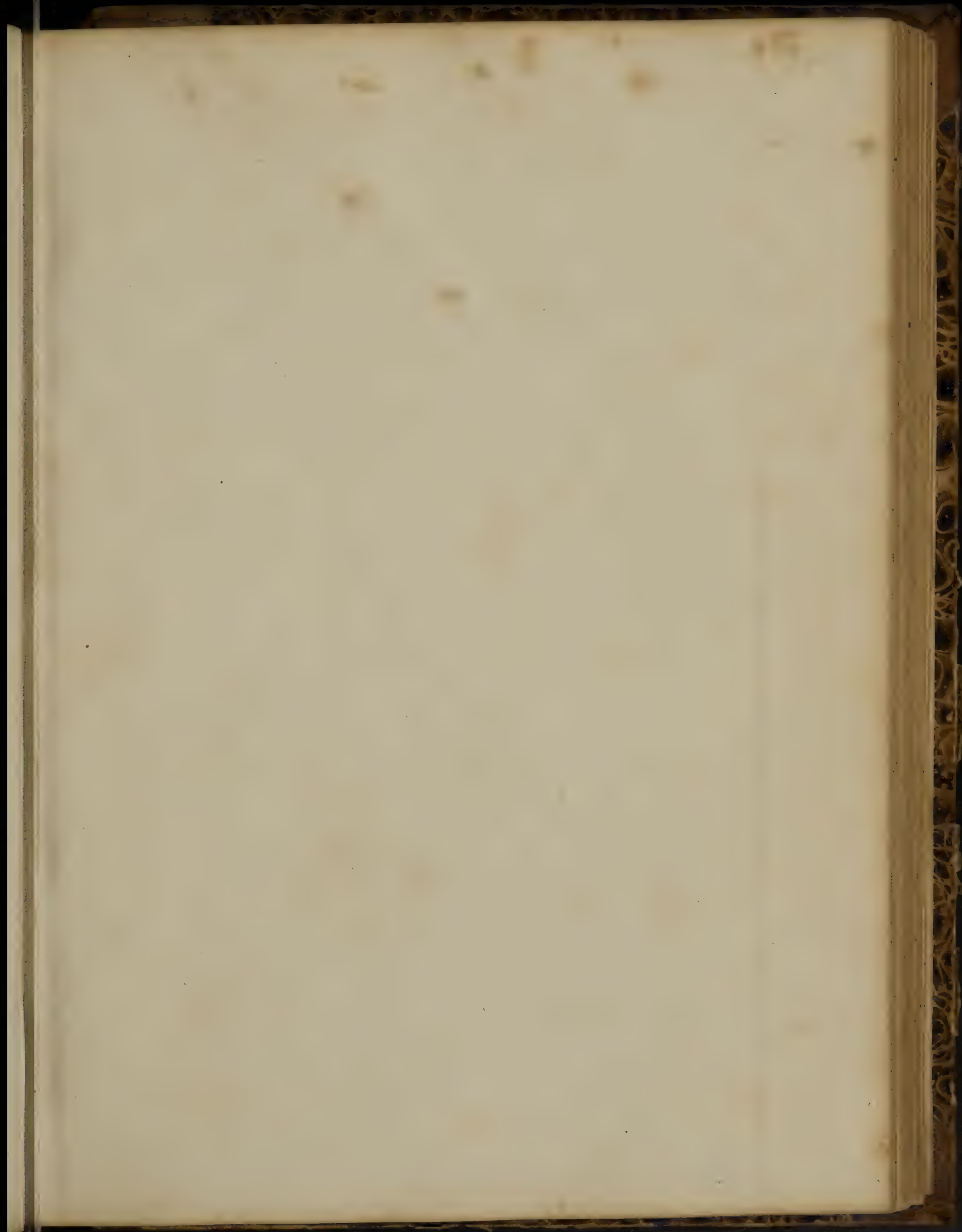
(208)



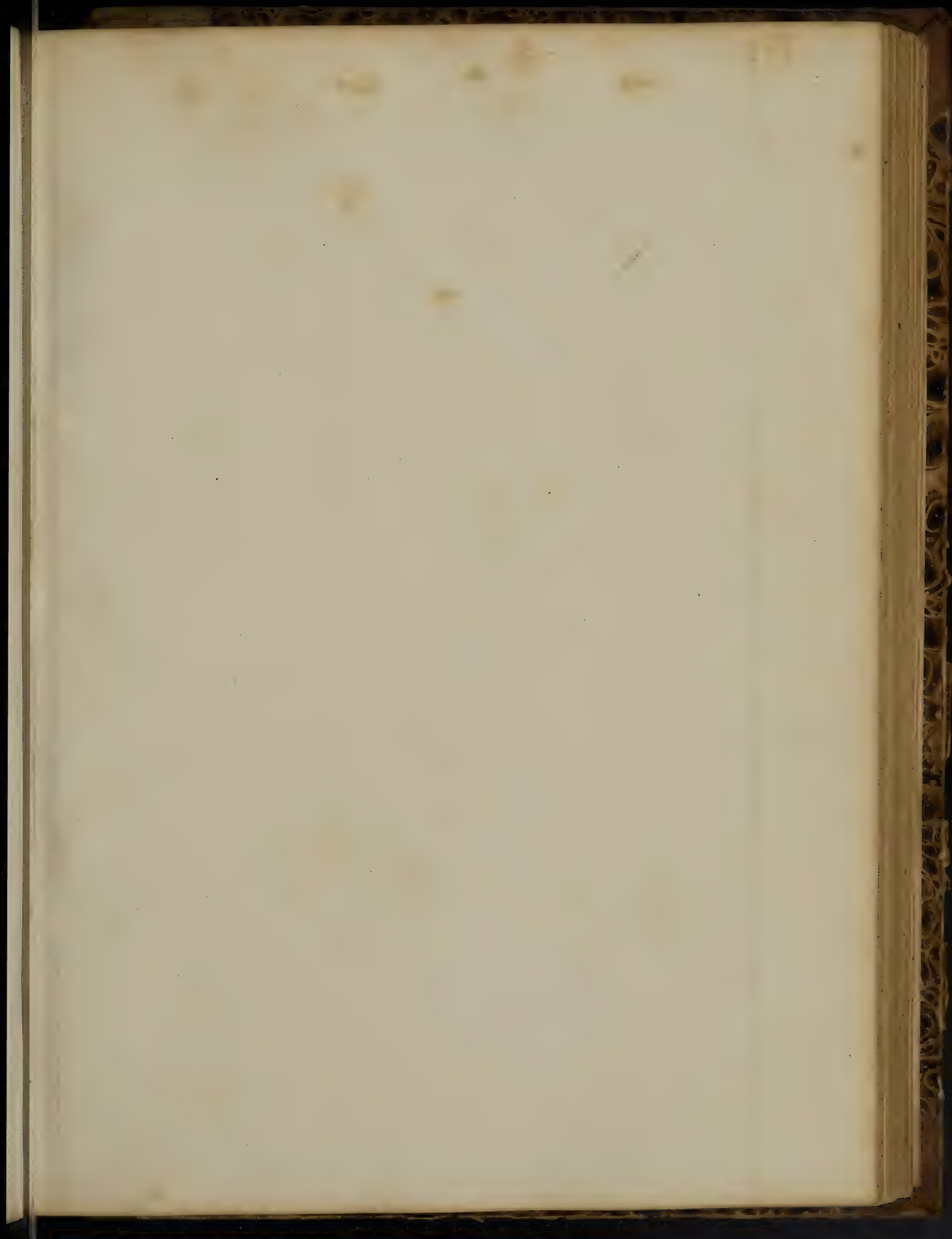
(210)



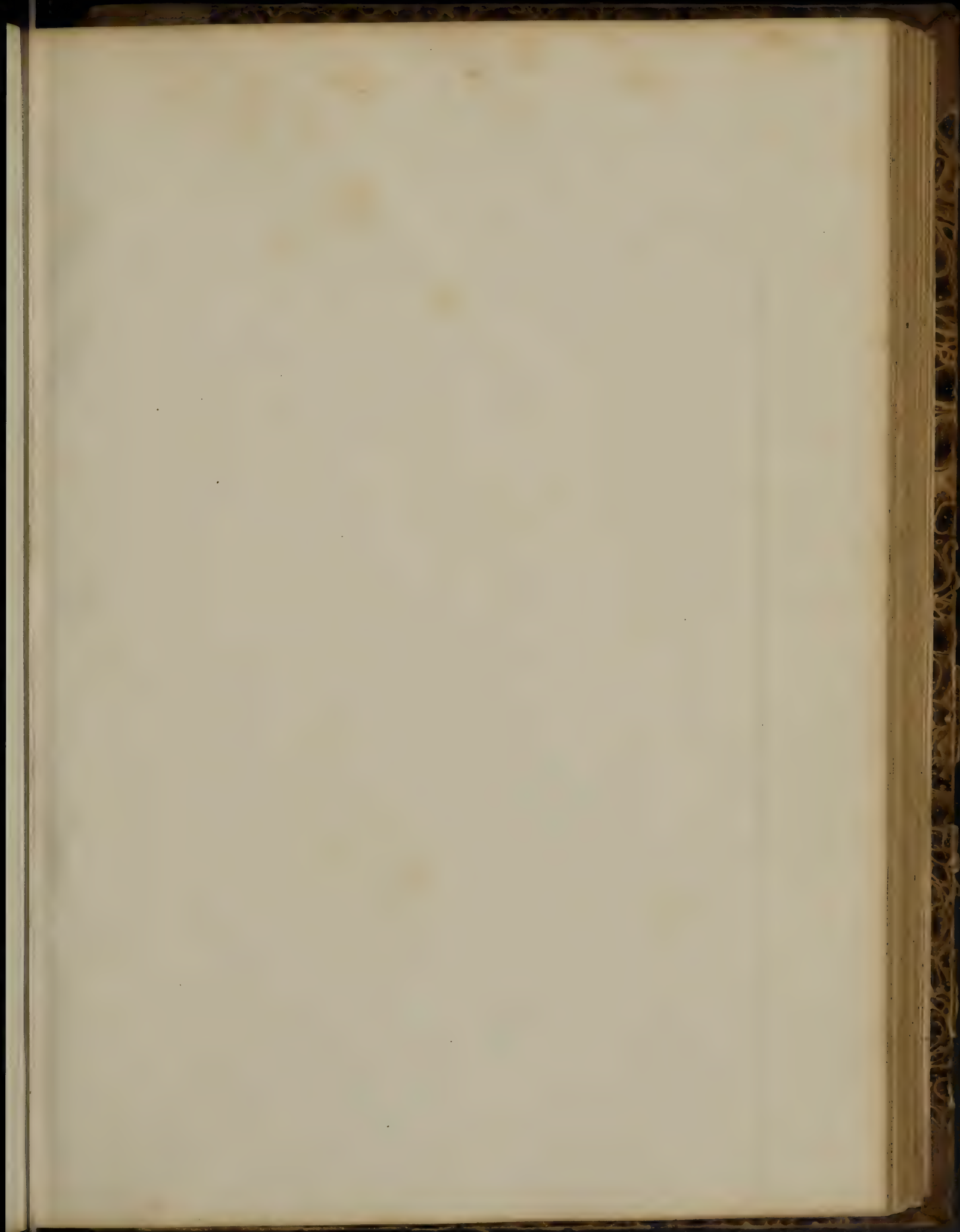
(212)



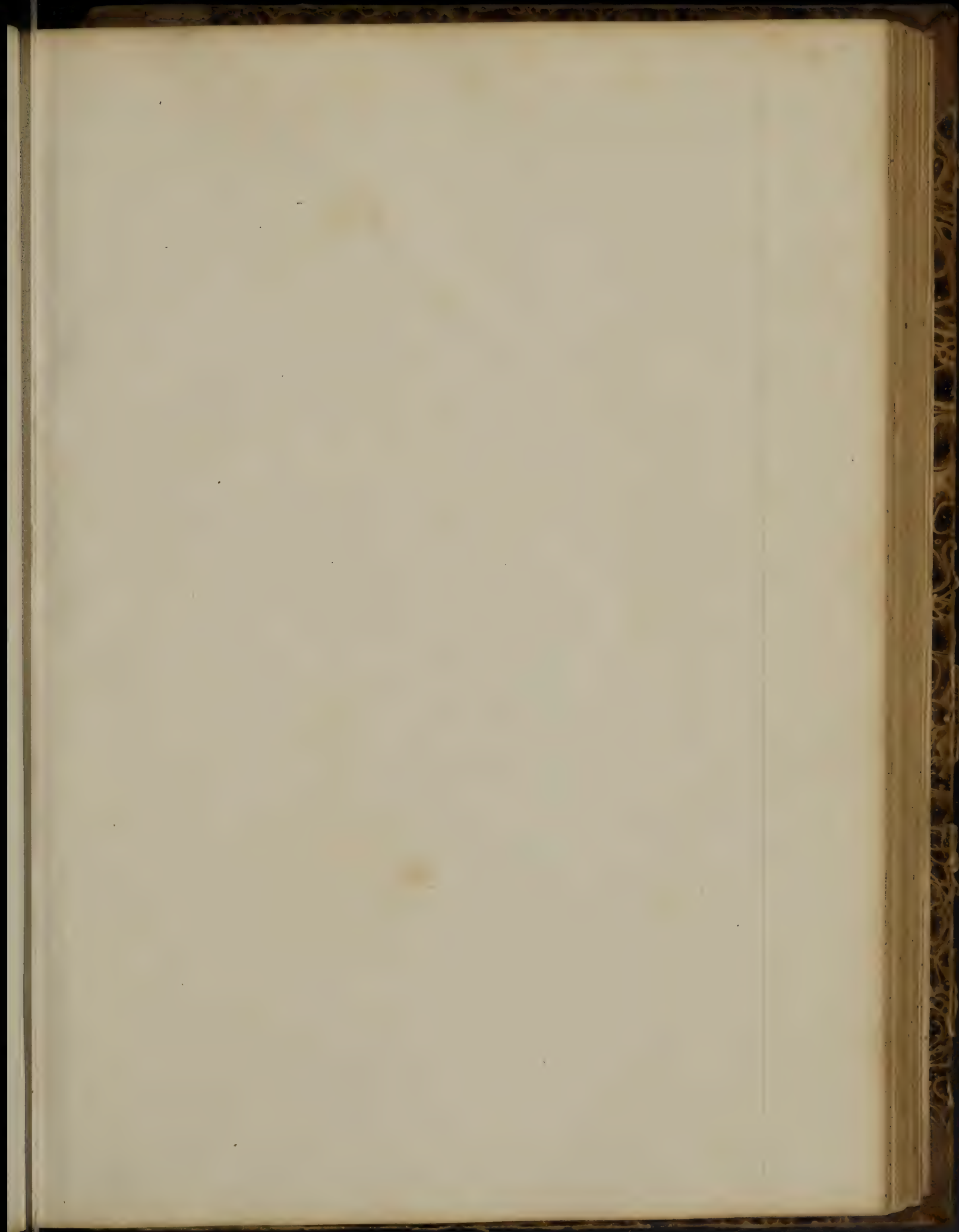
(214)



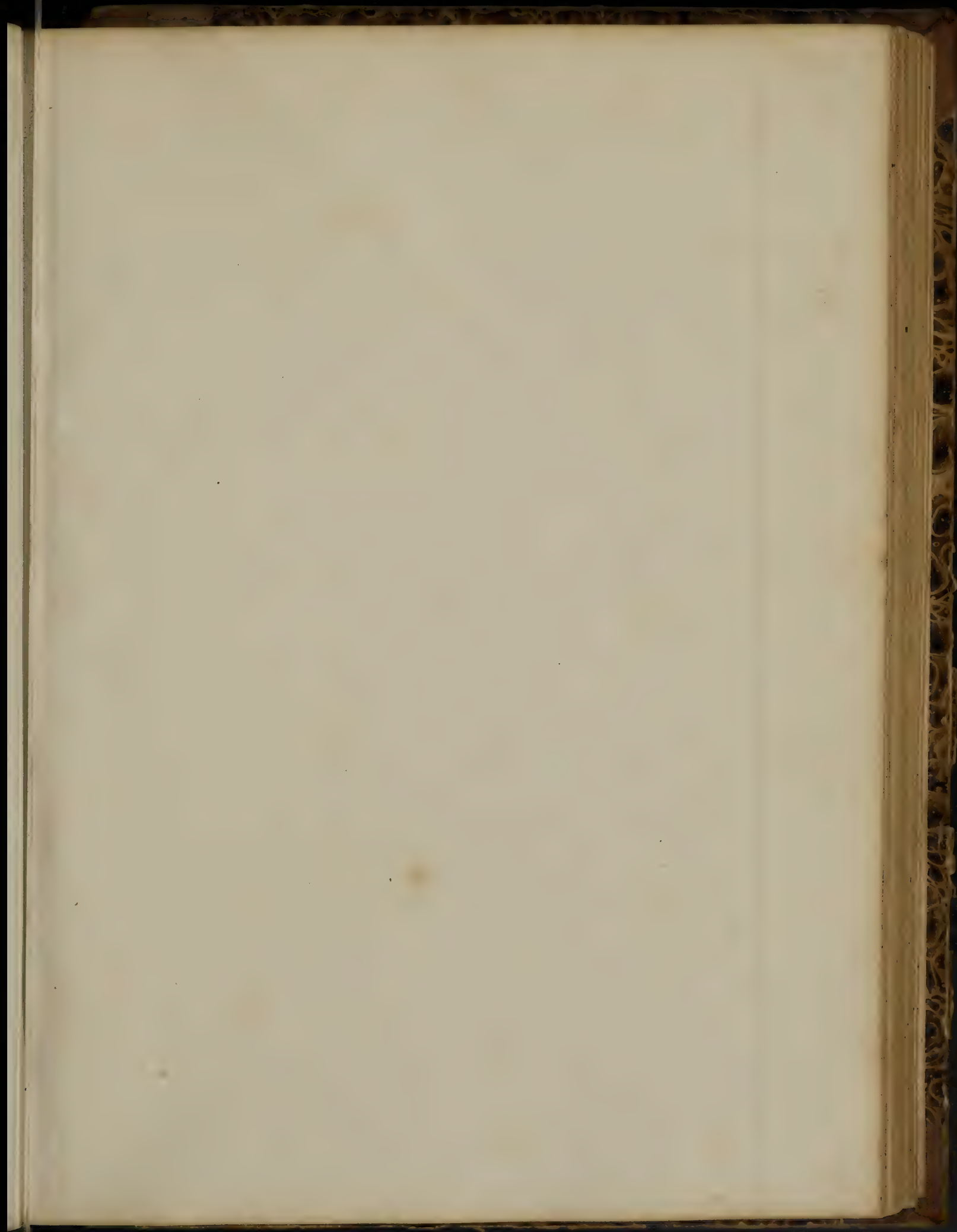
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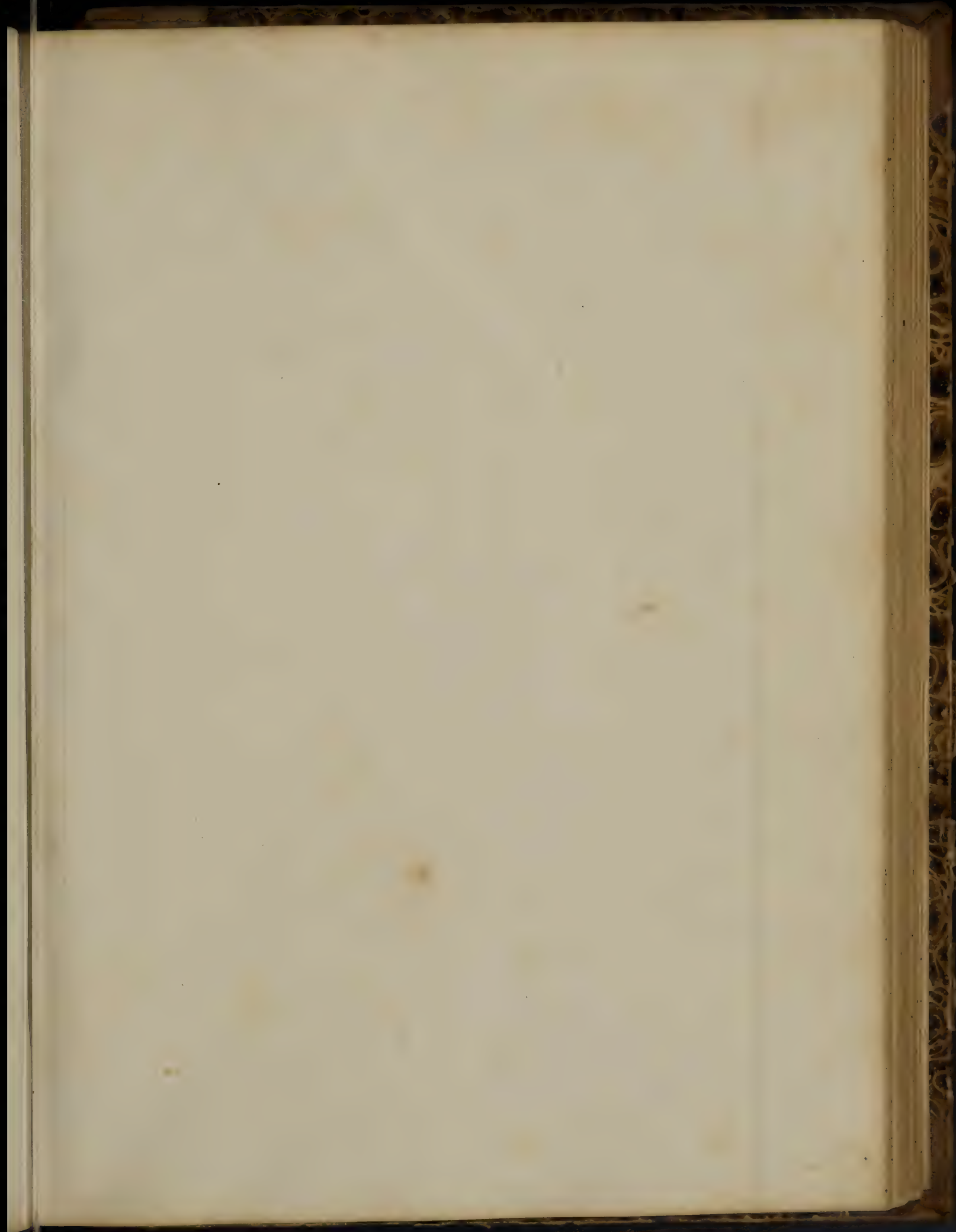
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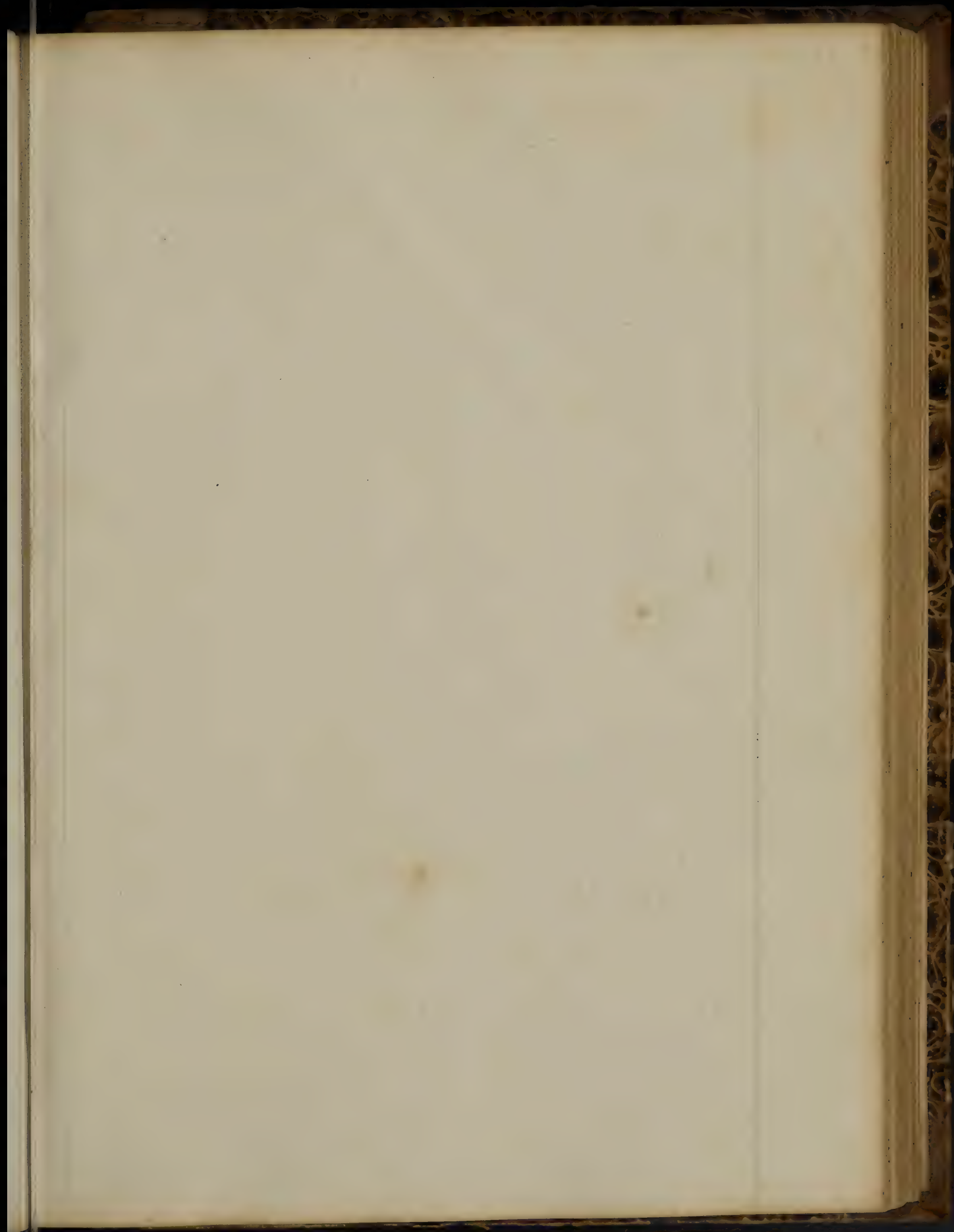
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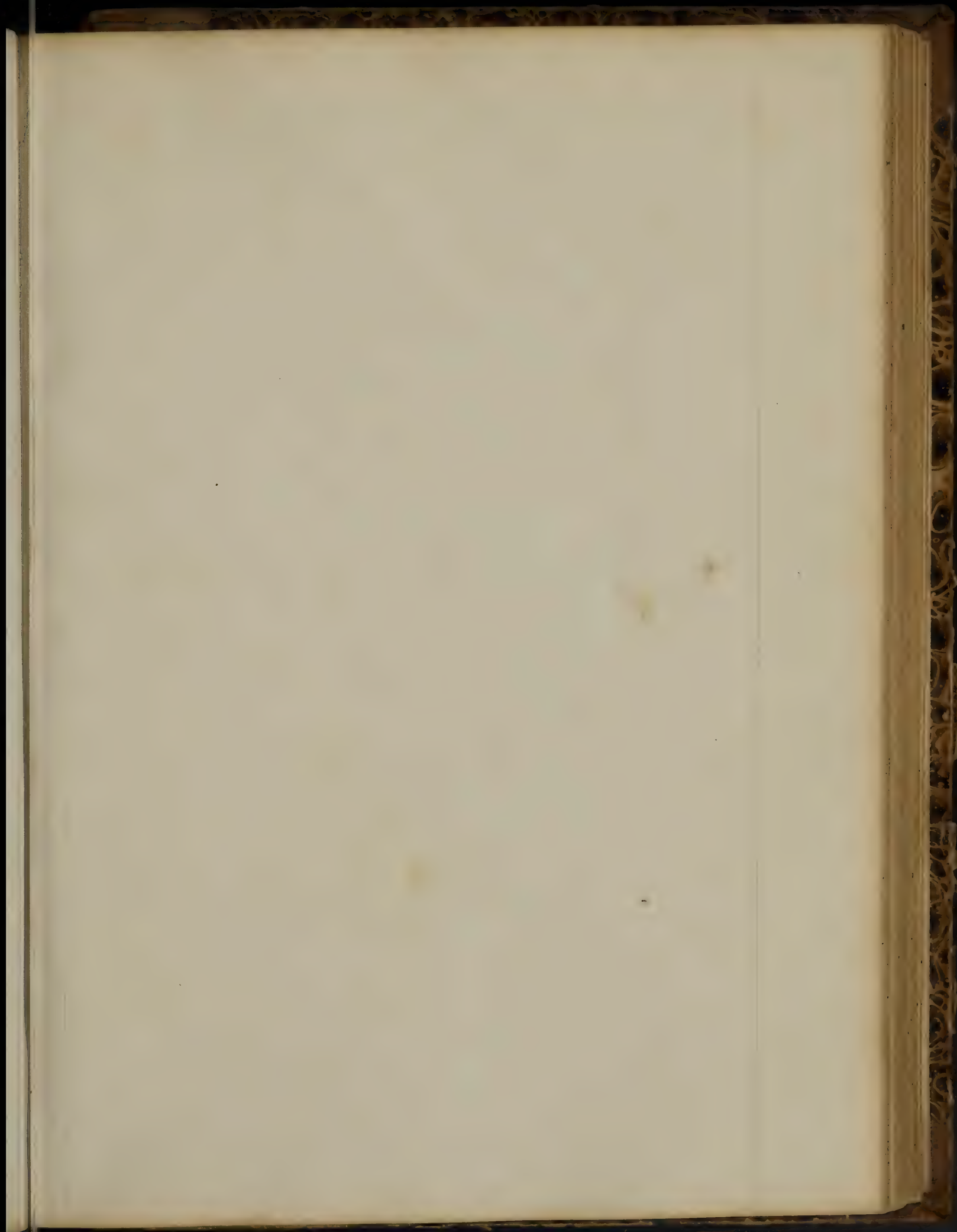
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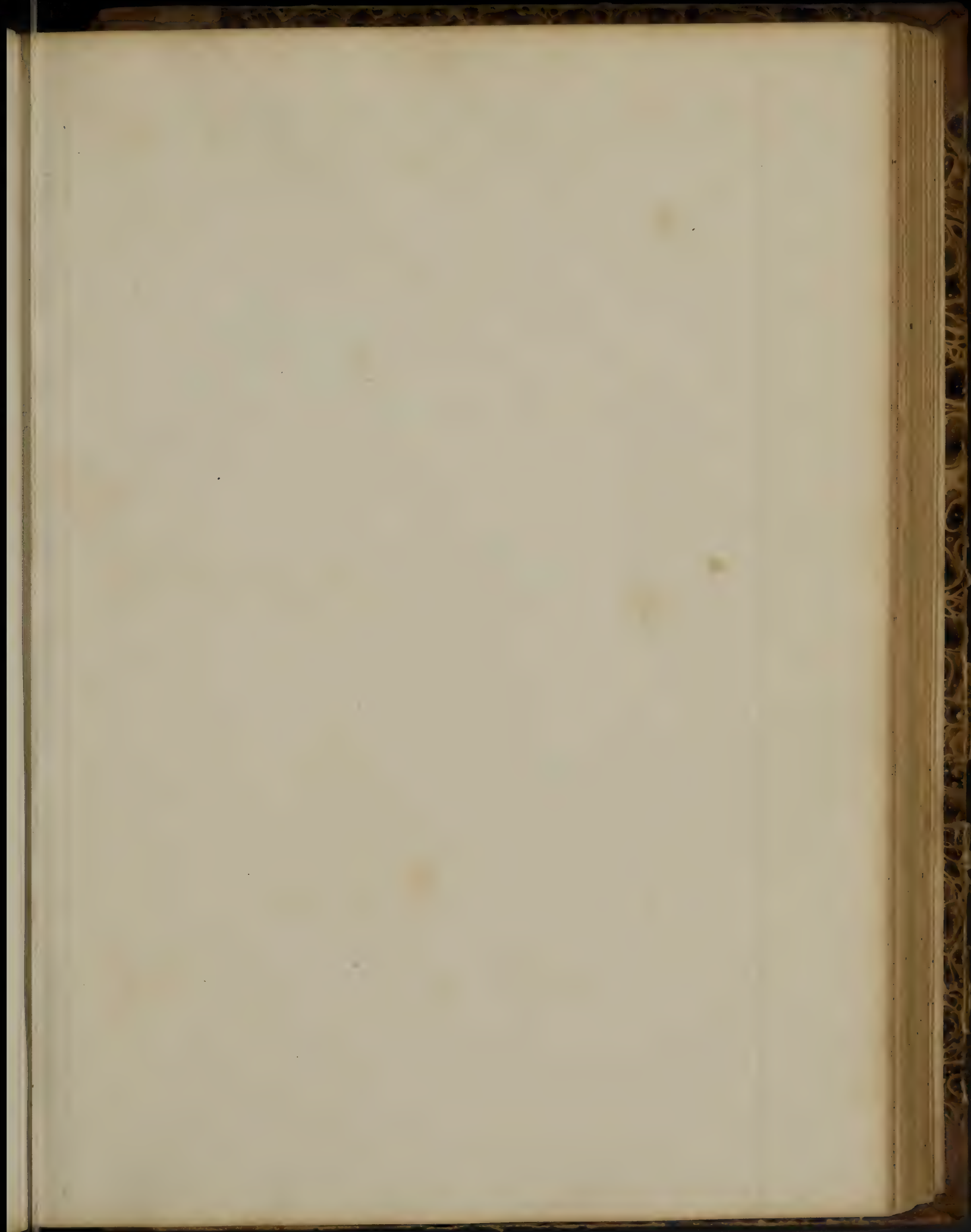
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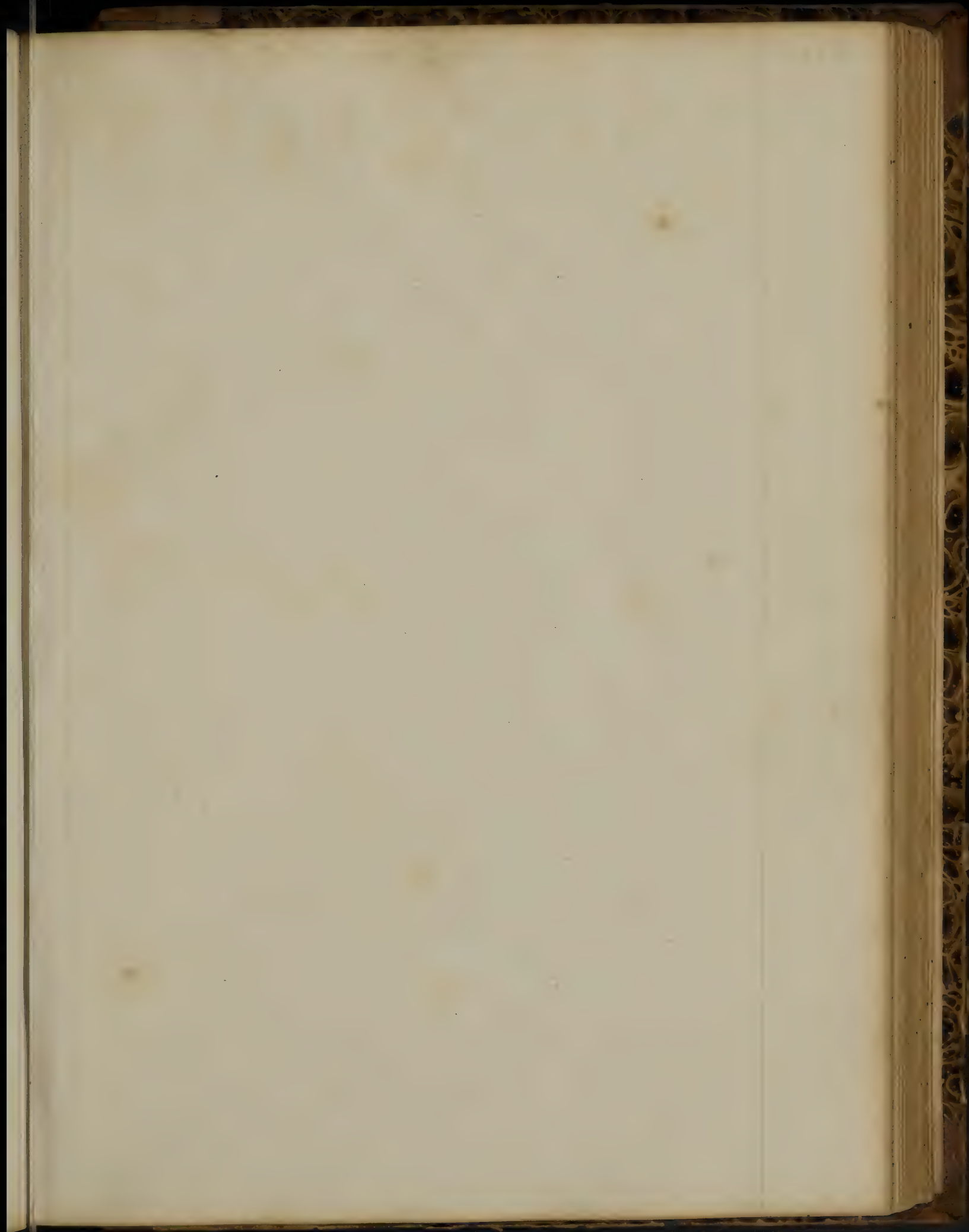
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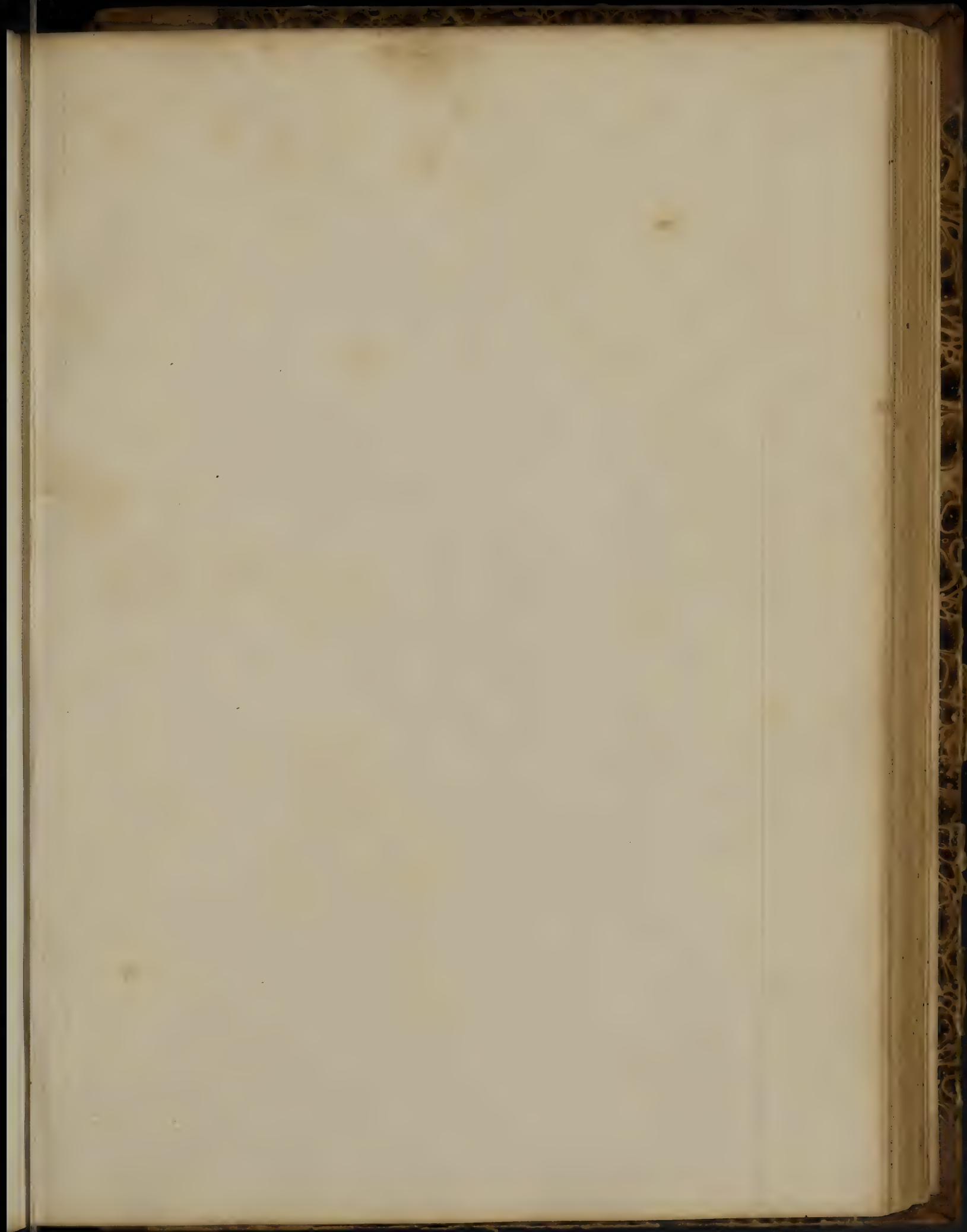
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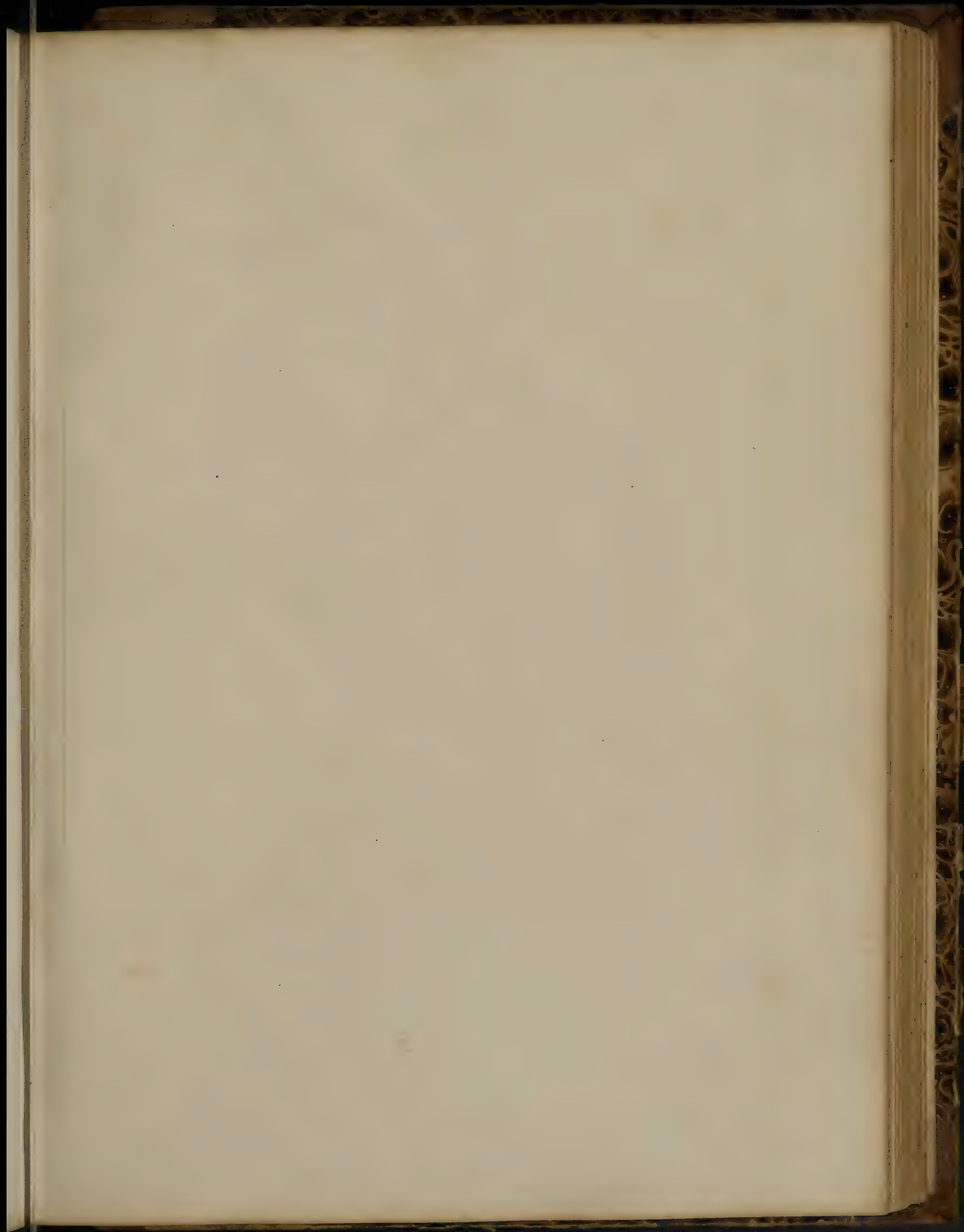
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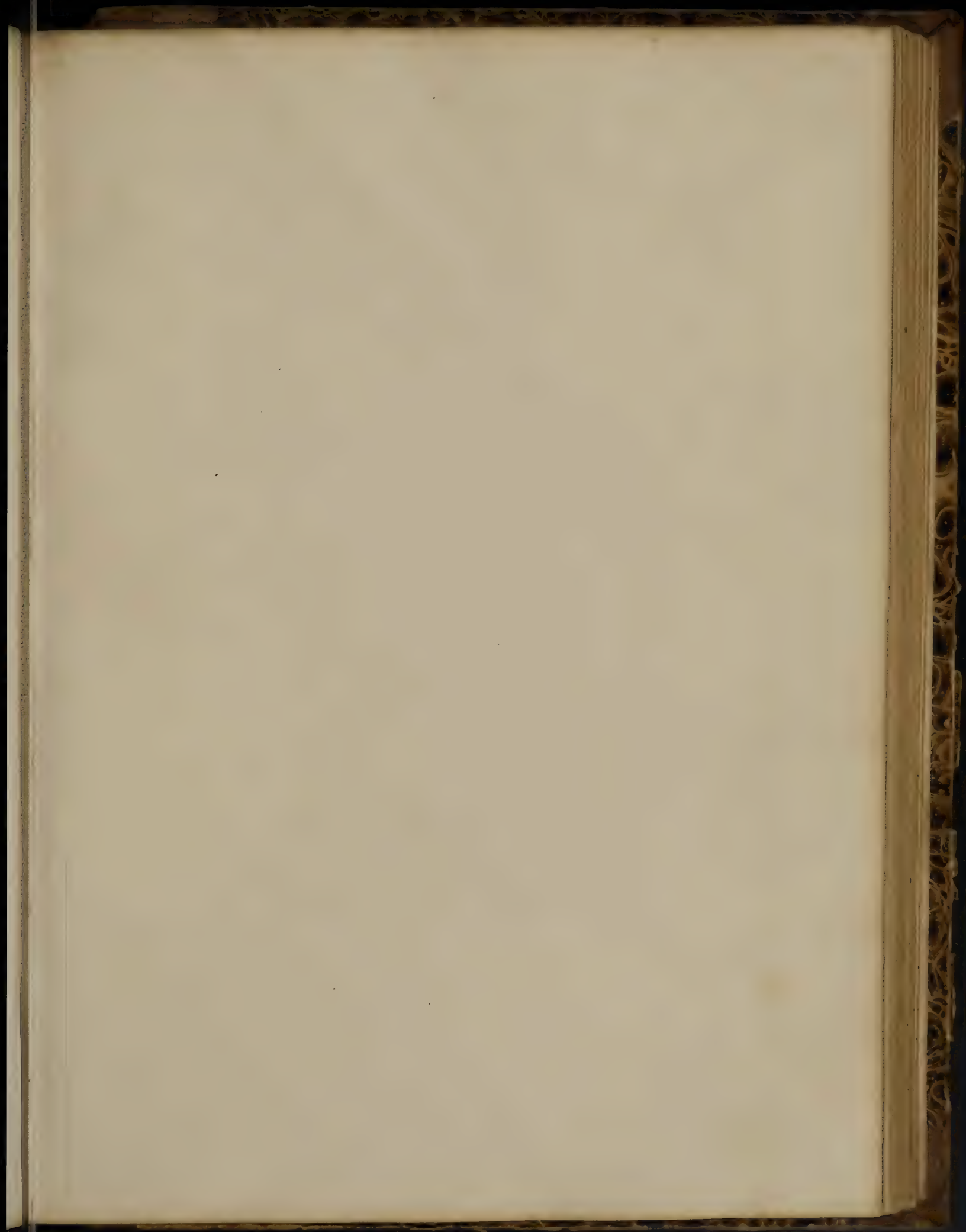
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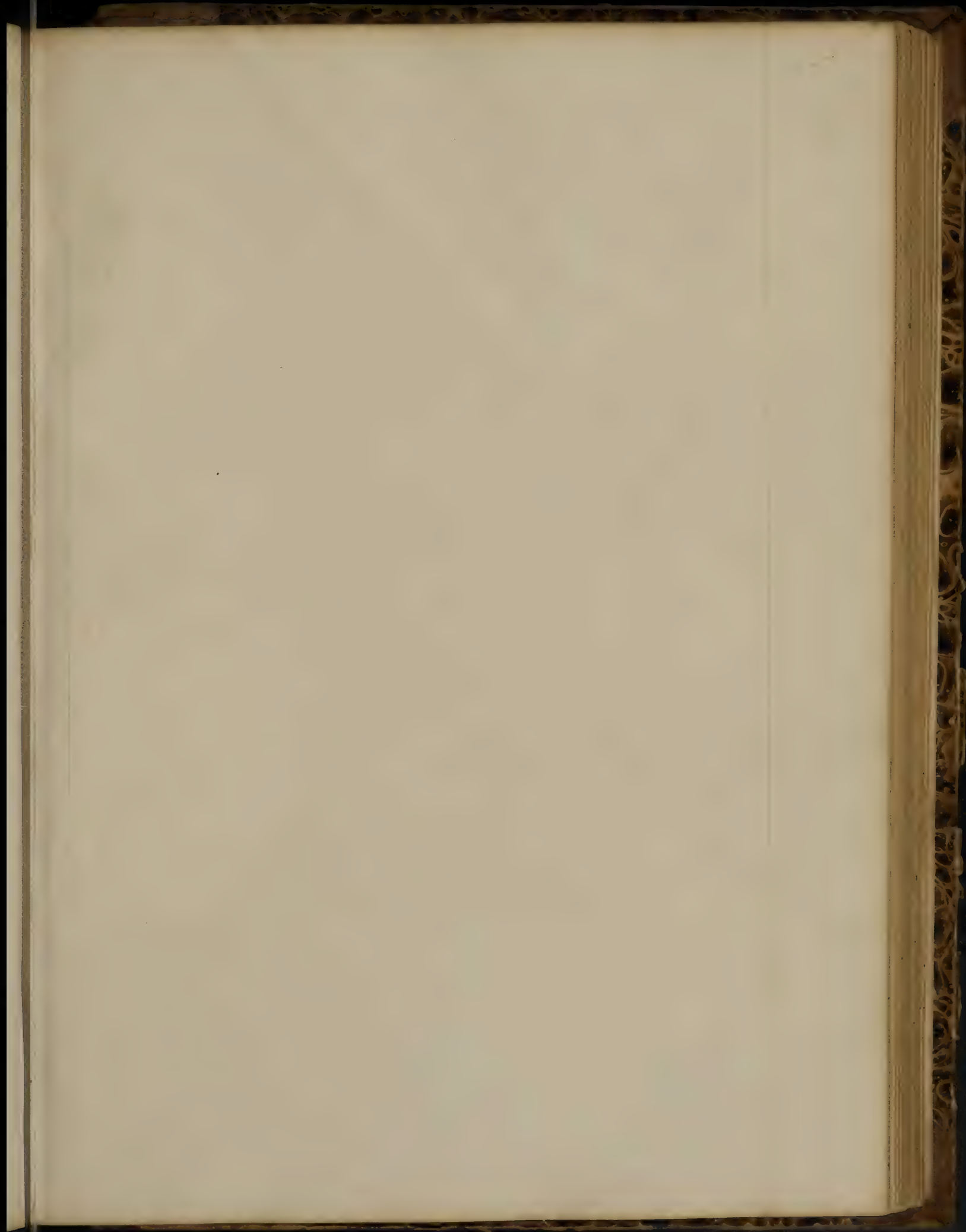
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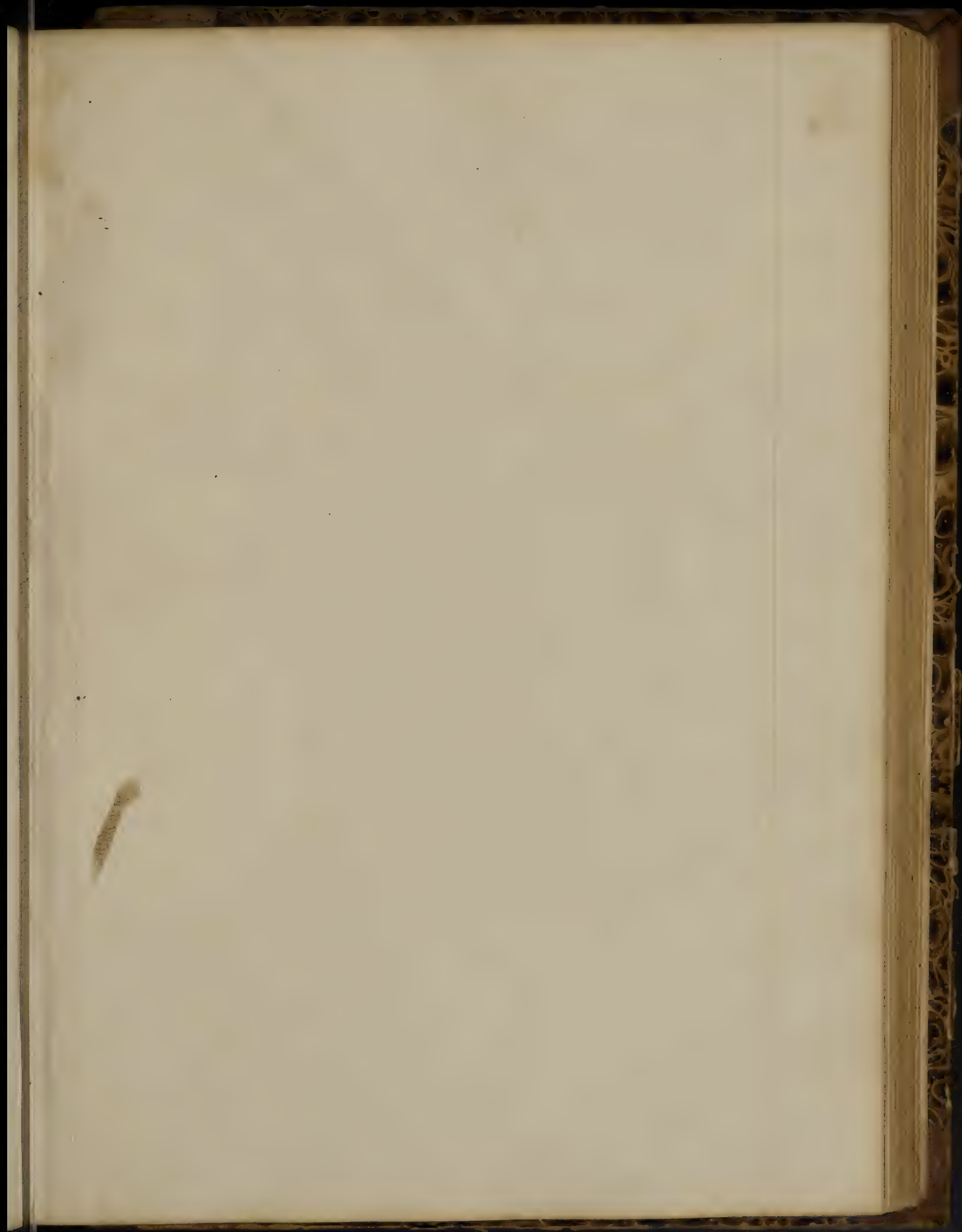
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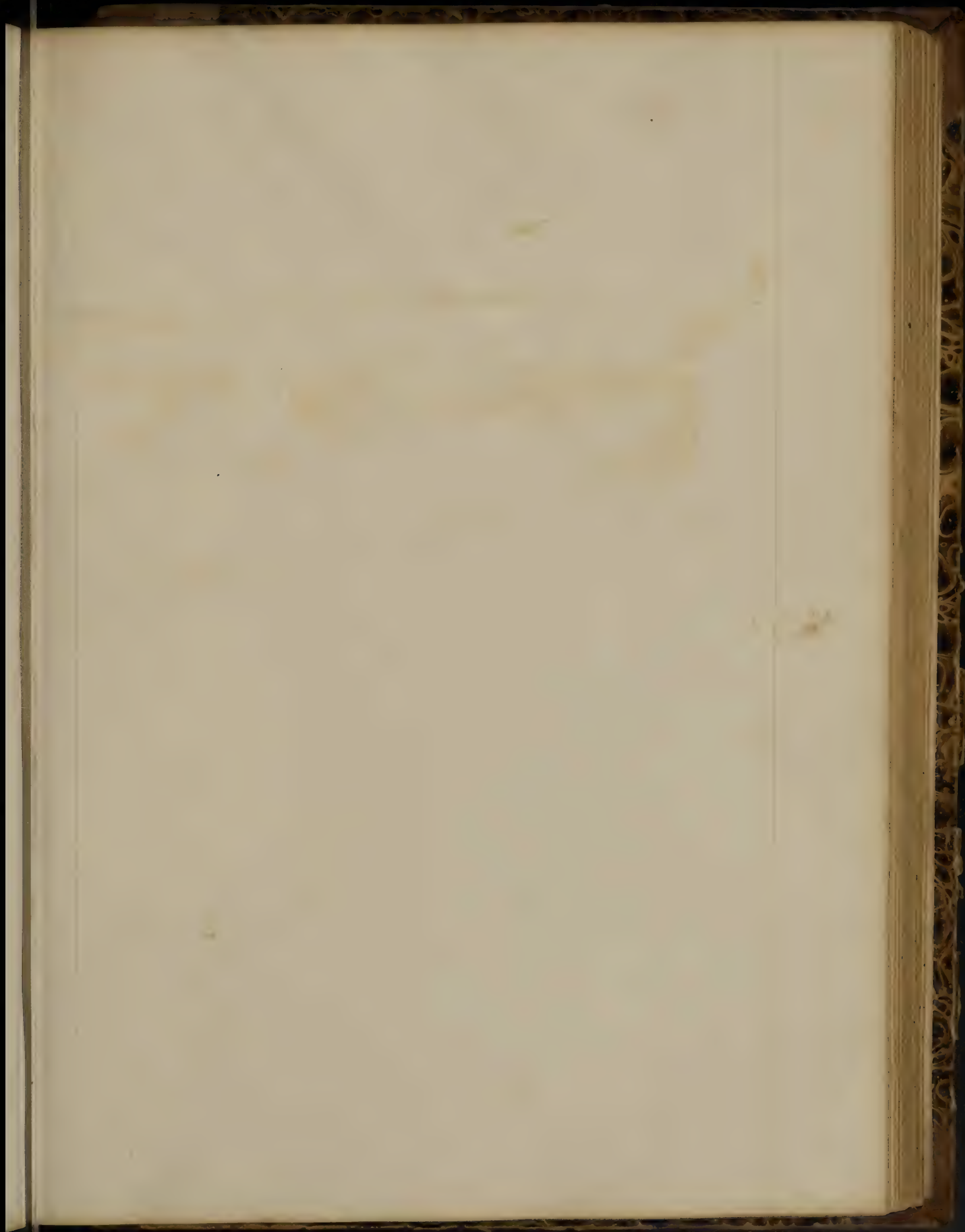
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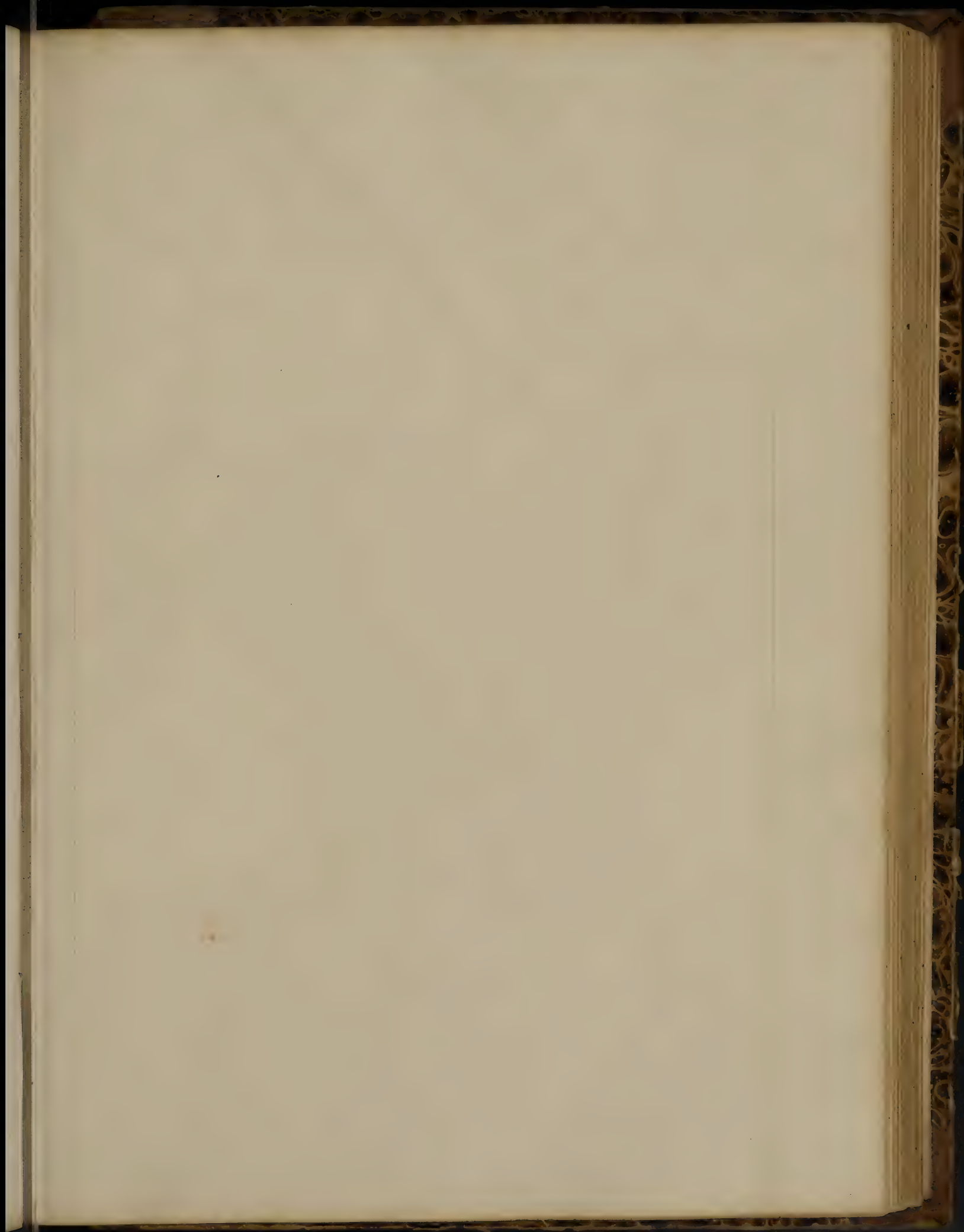
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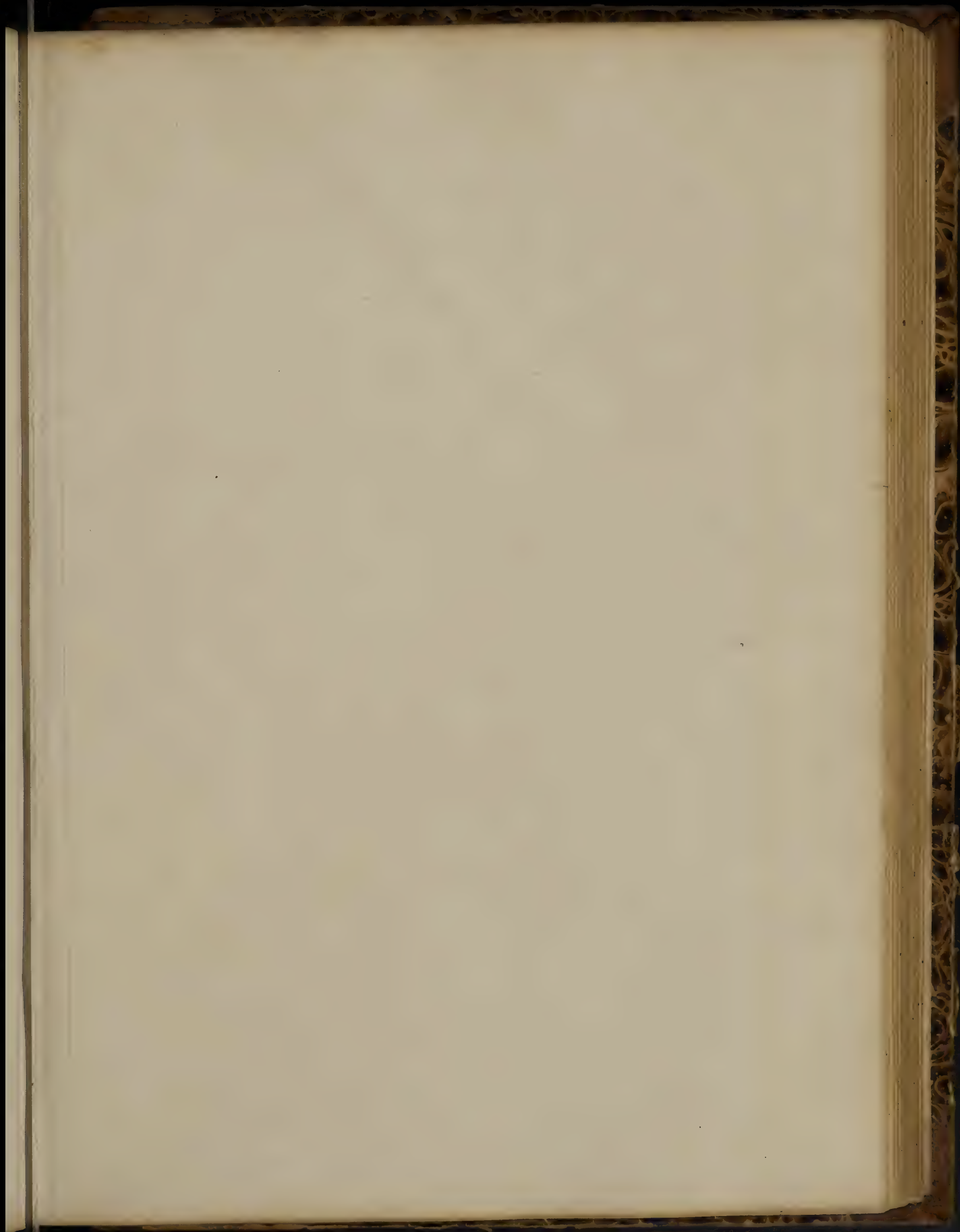
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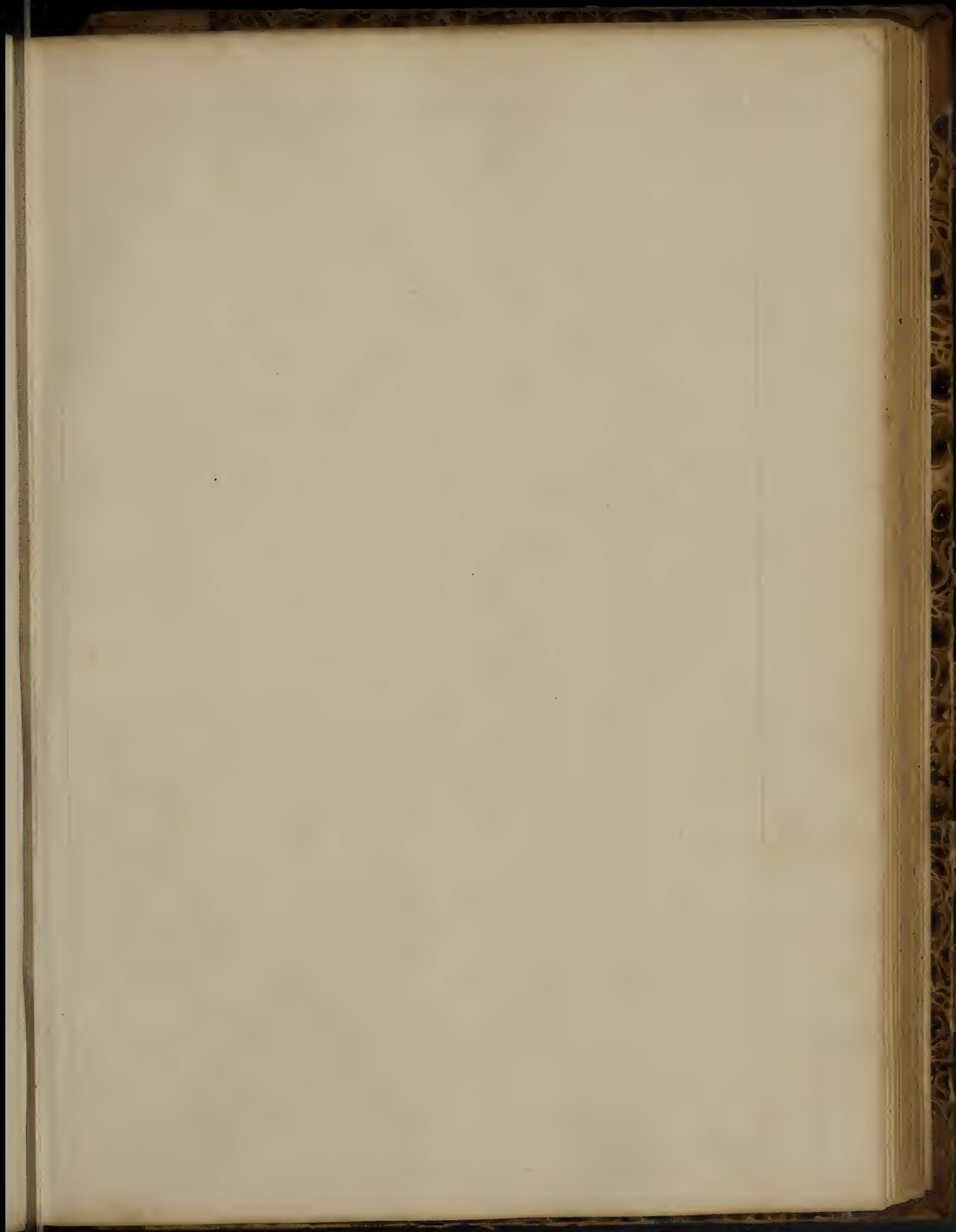
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(284)

Rules of captions & bills of order 1847

Are statements of facts & of some interlocutory
and decision or direction founded upon
them annexed to the record. By the
purpose of forming an opinion on them &
it is a bill of order because it contains
captions, to the interlocutory judge.
The mode of founding them was unknown
at the time it was introduced in West 25. 1847
Hall 115 at 116.

The Court the law of the state of West is
adopted.

A bill of captions cannot be taken except
in a bill from which a bill of order is
from a bill of record. Hall 116. 1847.

But such bill may be filed in all cases where
judges are liable to be removed in order
to the 25th. 1847. 1847. 1847. 1847. 1847.

In court the bills may be filed in the
Sup. Ct. & justice courts. In the sup. Ct. now superseded by West 116
But our bills of probate are not bills by 771.
of record. Hall 116.

(256)

When an error is committed in a judgment
not found & the error in case of error is
not apparent in the face of the record
a bill of exceptions may be filed & error
may be assigned.

So a bill of exceptions may be filed for
misdirection of the jury. In this case, in
this case there is another rule to be noted
for new trial, 1 B & P 154. 5. 2 B & P 288.
20181. & the latter is now the more
usual course.

2 B & P 237 If evidence is either improperly admitted
Ball 316 or rejected a bill of exceptions
may be filed.

But where evidence is properly admitted
a bill of exceptions will not lie because
the judge is to direct the jury how
to find upon it. The judge has to direct
the jury that a record is conclusive.

If over is refused a bill of exceptions
may be filed so he may enter his
prayer for over.

Where the judge allows a traverse a Rayn 416
challenge to a jury bill of exceptions Dun 11
lies, for a new trial may be granted 1 Bar 325.

But over is not predicable to any
proceeding, which is a new point of pro-
cedure & therefore if the Ct grant a new
motion of discontinuance a bill
of exceptions lies not. If a judge
refuses to direct verdict for costs.

When an interlocutory judgment is a Bull 116
matter which lies in the discretion of 1 Bar 327
the Ct below a bill of exceptions lies Dun 41
not as motions for new trials 1 Bar 325

But if a new trial should be granted
by a Ct who has no right to grant
a new trial or in a case where a
new trial can in no case be properly
granted a bill of exceptions may be
filed,

They are not allowed in cases of true
 fact & reason for this case is not
 within that 2^d - in such cases they
 can be in some cases. 1st 84 1st 85
 1st 84 1st 85 1st 86 1st 87 1st 88 1st 89 -

whether they can be allowed in cases of true
 fact & reason for this case is not
 within that 2^d - in such cases they
 can be in some cases. 1st 84 1st 85
 1st 84 1st 85 1st 86 1st 87 1st 88 1st 89 -
 in cases of true fact & reason for this case is not
 within that 2^d - in such cases they
 can be in some cases. 1st 84 1st 85
 1st 84 1st 85 1st 86 1st 87 1st 88 1st 89 -

When a bill of exceptions is allowed
 & filed the court is bound to put up
 the parties who file it to form a
 motion in arrest of judgment on the
 facts contained in the bill. 1st 84 1st 85
 1st 84 1st 85 1st 86 1st 87 1st 88 1st 89 -

✓ If the if a statement is always confined
 to some specific point or point, then
 all the words of the case cannot
 be embraced in a bill of exceptions
 & then over the whole case again
 into controversy. The this has been
 attempted several times in Court but they
 is bringing fact & law in and of law

Page 916

Collyer

1811

1811 17

1811 18

1811 19

✓ If the if below it, allow such a bill
 to be filed the it above will squash
 the and it over but on the bill
 the it is of course will squash it. In
 Court it is sometimes blundered in.

1811 18

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1811 22

✓ The bill is authenticated in Court by
 the seal of the judge or if one judge
 of the Ct. and of the judge sealing
 it acknowledged has sealed in the Ct.
 above & this is conclusion in authen-
 tication of the bill
 In Court the bill becomes part of
 the record of the Ct. below & is
 synonymous with the rest of the record
 authenticated by the seal of the
 clerk of the Ct. below & is

1811 22

1811 23

1811 24

1811 25

(26)

The bill must contain the interest
paid by the C^t - the party upon whom
the judge was bound by. If the facts
are truly stated the judge must endorse
the bill. Jan 27 1834. 1834 26

Jan 27 1834 ✓ If the judge disapproves a bill to be
filed in the Court & says the party is well
1834 1834. the judge must say, I do not know him
or practice

I have found the bill is not signed by the
proving judge - but in our Court it
by rule of practice the C^t will not
allow a bill of exception, in that
C^t is a mistake for one branch of the
the C^t is the only reason.

Jan 27 1834 ✓ In some cases under the Bill 215
70. the Court must be given at the
time of the judge that a bill will be
filed & it must be filed within 40 hours.

A bill of exceptions is no superseding
revised copy - Page 37

From Count of Bill in exception
or is the action of bill. plea will admit
it is unnecessary that on the trial. 17th. 18th.
I was offered as a witness to prove to
the Jif objected to his examination
because he here state the reason for
the at. rejected the witness. when in
the Jif except to at time of the
at I pray that the judge will certify
this bill & make it part of the record.

(262)

Rule of Law

Set bill of exceptions in any case made
of finding over and over

18640. ✓ set out of over as a commission to
3 Dec 1879. the judge of a higher Ct. to examine
before 1879. the record in with a judge. has been
submitted in a lower Ct. & to affirm
or reverse the judge according to law

✓ the Dept is summoned by being facing to
appear in the higher Ct. at audience
before 3 Dec 1879. 210. 3 Dec 1879

✓ the Court a writ of over as an original
writ directed to the judge commanding
him to appear in the Dept. Ct. then
& show to him the record & the
writ signed for.

✓ When a writ of over is found on a
bill of exceptions in the lower Ct. it is
found in an over apparent in the
face of the record & this is what is
meant by the term writ of over with
reference 3 Dec 1879. 210 & 230.

1. 1000
 2. 1000
 3. 1000

225
1822

677. 5
 12th 207.
 2nd 18.
 2nd 2.5

June 23rd

It is in fact the narrow channel which they
occupy is in fact the fact for all the cases of
Ridge out in sea bed.

When out of the water and on a shelf of
ground it is in fact the fact of the channel, then
the fact of the water is the fact of the water
which is the fact of the water in the water
the fact of the water is the fact of the water
the fact of the water is the fact of the water

It is in fact the fact of the water in the water
the fact of the water is the fact of the water
the fact of the water is the fact of the water
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It is in fact the fact of the water in the water
the fact of the water is the fact of the water
the fact of the water is the fact of the water
the fact of the water is the fact of the water

It is not a case in fact in which
one of the parties is the cause - or will be
found to be even - in fact it
is in the nature of a demand together in
one unit the effect of which is to be
tried. Simon & Co. v. B. & Co. 11 B. & C. 101.
19. 11 B. & C. 101.

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one of the parties is the cause - or will be
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found to be even - in fact it
is in the nature of a demand together in
one unit the effect of which is to be
tried. Simon & Co. v. B. & Co. 11 B. & C. 101.
19. 11 B. & C. 101.

If an error in fact is still alleged
the debt will not remain in dispute
at all times for they plan to pay the
fact is a dispute. The debt will remain
the fact. / 1. Feb 5. 1893. Raym 37.
231. 2 Rec 23.

But if an error in fact is still alleged
the plea in dispute does not conflict
it. Or if the fact alleged is contradictory
the need is if in fact the fact is
not applicable for error. See p 12. 29. Ray
Ray 231.

- Root 261 On Sept 21, held that if a debt is in
law the obligation the adding of error
in fact will not be sufficient to
discharge & does not vitiate. In
another case the Ct. ordered the error
in fact to be struck out. But only
if error is not available because the
law does not favor the removal of
facts.

The abatement of error in fact will
contradict any statement in the record
or what is implied in the record is
ill. By the rule case that the Ct
did not sit on the day mentioned in
the record. Or again error assigned is
that the bill is error did not appear
when it appears in ~~some~~ record that
the bill did appear.

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(268)

If the man in law a unit of man
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But the man in law is
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With the rule remaining as formerly
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where there are civil parties, to give
action all these parties must join
in a writ or writs to reverse all
Carr. p. 1. Sec. 1. Rel 475. 3 Elliot 124.

But if one of these parties will not
proceed to a writ or writs he may be
summoned & forced. 2 Jac 1929

In Court. one etc. have received a judgment
to some of the facts & opinions, he is to
obey. Rel 114.

If the facts of a judgment are reversed it
may be affirmed as to fact & reversed
as to law. In a common judgment for damages
& costs where it is not allowed to give
costs here on writ of error judgment will be
affirmed for damages, & costs will be
reversed. 1 Stra 120. 2 Stra 601. 4 Burr 2022
1 Root 138.

No one can bring a writ of error except
a party or privy to the first judgment.

But the privy who brings a writ of error
must be a party in relation to the
subject matter of the writ, 2 B. 555
2 Bac 145. 1 Sid 217. 1 Leon 26. 1 Rel 747. 3
755.

✓ to pass the matter to the jury
 even where it is given in a bill, &
 to reverse it unless it was to be
 dispositive of the action, & the
 judgment is in favor of one & against the
 other the latter must sue alone on
 the writ of error, for here indeed
 the two are not parties to the same
 judgment. The judgments are distinct.
 406 70. 5 Co 59. 5 Co 39. 1 Lev 210.
 11tra 892. Comp 425.

But there are cases in which the
 prevailing party below may reverse the
 judgment on writ of error & the rule is,
 where the error is the fault of the
 Ct. & alters the nature of the judgment,
 the party who prevails may reverse
 the judgment. This is allowed for the
 sake of regularity in judgments.

If judgment entitles the party to
 costs & damages only are given.
 5 Co 59. 5 Co 39. 1 Roll 759. 11tra 971.
 7-1100 184. Cal 107. & again if on
 condition as to judgment given only
 only

Writ of error (122)

act of a person who has been an actor before
it not having jurisdiction may bring a writ of error
to remove a judgment in his
favor.

✓ A writ of error which requires removal & proper
bail entered becomes in effect a supersedeas in the
judgment. Bail showing the writ of error was
formerly a supersedeas for some days before
allowance of the writ of error by the court of error.
But now it is no supersedeas until allowance.
& now the allowance of the writ is in
supersedeas only for some days unless proper
bail is put in. (Wells)

But a supersedeas is meant a suspension
of the right of the party prevailing below
to take out judgment or to proceed if it is
taken out. 1 Mac 212, 4 Mac 121.

The bail required in England is with two
sureties & is double the amount of the judgment.

- ✓ In Court if suff^t bail in a writ is taken the writ becomes a supersedeas. as soon as it is seized in the writ in writ 2 Day 270

It has been supposed that a writ of error with bail may be effectual to the reversal of the judgment below tho' it will be no supersedeas of the judgment & the plaintiff must.

- ✓ Here if Ex^{or} is obtained & is in the hands of the sheriff the writ of error becomes a supersedeas of the judgment & Ex^{or} in his hands when a copy of it is left with him is the sheriff.

Cl. & Paving In C in 1816 the time for pleading in a writ of error is the same as that in cases of original writs viz before the second opening of the 2^d.

- ✓ If the first writ of error is discontinued by the fault of the plaintiff in C, by a second writ there can be no supersedeas of the judgment and when the writ in C is reversed we can have no second writ of error. 1 Kel 506. 20 Ray 91. Lamb 13. 393

But this rule does not hold where the
first writ of E. abates by the act of
God as by death of plf. or in England
by death of the Chf justice 1 Ke 51 156.
440 108

Writs of E. are not amendable except for
the single purpose of being confined
to the record - this by a late statute
5 Geo. 3 or 5 Geo. 1st 5th ed. 10. 24. Salk 44.
Carth 520. Conyn Dig 4th 2 c 4. 2 Bac 1024
In court amendments for the same
purpose are allowed.

But a writ of E. does not abate by the
death of deft in E. as far as may
appear by his representatives. but it
does the writ abates - 1 Wentr 34. Salk 164
440 208. Carth 230. also such question
has arisen under an E.

✓ Let and let E in suit matter of street
 12th 164 right in court the judge applied to
 320 to sign the writ of E in suit examine the
 2 Pac 211 would & may refuse to sign it
 4 Pac 111.

Let on judge may be sustained not with
 7 R 458 standing a writ of E but to reverse
 12th 145 the same judge for that E is suspended
 Kay 103 the Let on removing, & an erroneous judge
 8 Co 142 till reversed is as binding as any
 12th 153 other. Suppose recovery had
 1 R 1742 & the original judge reversed the same
 2 R 442 judge is ipso facto reversed.

But the Ct in its discretion may stay
 proceedings in the action of Let on
 the judge & the Ct frequently will do
 this 2 R 70.

4. If a third person engages to pay what
 shall be recovered in a suit against A
 & a recovery is had in C & B & C brings
 a writ of E & the third person is sued
 he may plead in bar the pendency of
 the writ of E in suit in the original
 action.

✓ Since an in conjunction with the in
 by having taken the body of the in
 & subject not of the in the in
 it does not diminish the delta from
 in body 1.000 to 1.000 Dec 137

✓ So for the purpose of the in the in the in
 the reversal of (the) in the in the in
 the in

✓ If you have seen taken & not in the in
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4. If the price in our hands is higher than
the price paid by the railroad, we
must make the first payment from that time
forward, and we must pay the balance in 3
months - so that we can get the balance
paid in about 100 to 150 days.

5. This rule cannot apply here the way
we have signed with the rail.

6. If the price in our hands is higher than
the price paid by the rail, we must
pay the balance in 3 months - so that we
can get the balance paid in about 100 to 150
days.

In some cases a reversal of the judge's decision
may be proceeding under the writ of habeas corpus
and in other cases it is a writ of habeas corpus
which is not directed by the court but
is directed by the reversal.

Ex if a writ of habeas corpus is taken in Ex &
kept in the office till reversal or
reversal then goods must be returned
to the debtor. 1-2 if the goods
taken are returned to the court a valuation
a subject reversal directs the title of the
Ex 1 2 Pac 231:2 270. 1 R. 778. Selv 174.
Cro 240.

But if the property has been sold by
the ship to a third party the property
notwithstanding the reversal of the judge's
decision this will support that the ship has
a right to sell. She can not set
vocate an act required by itself. 2 B. 1352
26. 11.

The remedy in this case is in damages not
the property in the ship & not in the ship.
Cro 271.

at end of C in this state must be 10 years. Mass. 14.
three years from the first recorded sale. Illa 11.
in Engl: the at of death, 10 years. Illa 10.

[illegible]

If the pig in C has paid any thing on the account, must be now received back the same to him in the bill of C. as then was.
 That the pig in C may demand simply a part of interest & the pig may bring what it is for the money. But this is not usual for land.

15-Pig. In a judgment of affirmance the debt in C is entered to interest at the discretion of the Ct. In some by Ct. in England by practice, interest is now received almost almost at once.

To the English practice on debt and the bill in C interest is now allowed 25% of 70. long 70.

16-Pig. When we receive the bill into, the usual for further time in the Ct. about is must do it in the same term of the receipt of it is remanded to the Ct. before it must be entered on the next term of that Ct.

Case II. Judgt^e below for A to recover of B pro debt &
\$10 costs. Judgt^e reversed for the insuff^y of the dec^t
no part of the ex^t paid; Judgt^e above is that Judgt^e
below be reversed & that B recover of A \$10 the amt^t
of costs incurred by B in the Ct below but no costs
are recovered by B on the suit in C.

Case III. same as before except that A had collected
the contents of the ex^t. Judgt^e if unusual as before
and that B recover of A \$40. viz \$30 for the
ex^t & \$10 costs which B ought to have recovered
in the Ct below.

III. Judgt^e below for A at supra. affirmed in
the Ct above - Judgt^e above is that Judgt^e below
be affirmed & that A debt in C. recover his
costs on the suit in C. Judgt^e in Ct below is
again operative interest on the first Judgt^e is
also allowed if the Ct in their discretion
thinks proper & ex^t issues for it. practice in C
to allow it of course.

IV. Judgt^e below in favour of B. A by W of C moves
that Judgt^e the Judgt^e in this case is merely a
Judgt^e of reversal. if Ct above can try questions of
fact & if on the reversal enter the cause in the Ct
above for further trial & if on final Judgt^e be finally
recovery together with debt costs & damages all
accrued before & after reversal no recovery no costs
on the suit in error. if A had a. the costs taxed
agt^t him in the Ct below he w^d have recovered
that on the Judgt^e in C as damages.

V. the Ct will reverse the judgment in the last case is incompetent to try questions of fact the cause is remanded to the Ct below where it must again be proceeded with or if it is the final judgment it will be reversed & a new trial ordered by Ct of C. B & P 30.
 2d Raym 10. Chitt 314. Day 103. Henson et al vs Chester

VI. Remit in Ct below to dec^r dec^r adjudge goods judgment reversed, if dec^r can be amended the plaintiff may enter the suit for further trial if not the Ct will give judgment for costs & for costs below Remit in on sup^r Ct

VII. Remit in Ct below and reverse insufficient Remit on writ of C here the Ct enters the cause for trial

VIII. Remit in Ct below and reverse insufficient judgment reversed, Ct enters for trial

A Plea in bar adjudged insufft. unless in C^t
about if it sh^d enter for new trial it w^d
be to no purpose & B^o do not wish to enter

10.

(284/)

New trials.

The mode of obtaining a new trial in England has since is by motion made after verdict and before judgment. In this motion the applicant is allowed to show facts to show cause why a new trial should be granted. The granting of this rule suspends the judgment until the motion is decided by the court. For the motion are necessary in Banco. Doug 750.

In court a new trial is now usually obtained in the same way. But by statute it may be obtained after judgment entered. And a new trial may be obtained by motion or petition, when the ground of the motion is any thing which happened at the time or before the trial. Evidence for motion for a new trial is usual. But if the ground of the application is any thing which occurs after the trial & judgment as the discovery of new evidence a petition for a new trial is the proper mode.

No time was formerly limited for application by petition for a new trial but now limited to three years.

the application for a new writ is in
 2 Wils 306:1 and in appeal to the discretion of
 the 2d. I have it will not in general
 1 East 457 be granted where substantial justice
 11 D 411 is done by the first trial
 3 Bl 291:2
 1 Run 300:2
 2 R 45
 4 R 482.

This rule does not hold in all cases,
 then we move in all & it cannot
 exercise any discretion.

4 R 202 But in grant a new writ it is not granted
 1 R 35 to enable one to claim usury, infamy
 1 R 700.
 4 R

Whether a new writ can ever be granted
 to enable one to plead the 1st
 count, & so on is doubtful. 1 B & P 228.
 20 R 114.

But there is a material distinction between
 a motion for a new writ & a point
 saved! the latter is strictly legal, no
 discretion can here be exercised. 1 B & P 228.

He it may want a new trial in trying,
because the plaintiff is discretionary,
if on motion for new trial the Ct may
say he will grant your motion provided
you will submit to a discovery in writing
or provided you will submit to a book
reference. 3 Bl 322. Walk 48. 7th 529.

In the English practice if the ground of
the motion is one thing all papers
open & at the trial the evidence is
upheld the Ct is taken from the
judge's notes or report. but in this
ground is not such the judge's notes
must prove the facts by affidavit
10th 235. 2d ed 140. 3 Bl 321.

then there are matters only to the effect
of the Court by single magistrates.

When there are several drafts part of
 whom are convicted & part acquitted
 or if whom are convicted & part
 been held that no new trial can be
 granted unless the whole number of
 drafts are joined in the motion

3 Keb 009
 Stra 114
 5 Ch 302
 2 N 275
 Bull 321
 6 N 200
 031.

Bo

The answer, a new trial will be granted. But if

I want it, and notice of trial, but if I want it
 and notice the draft has appeared & appeared before
 he cannot have a new trial for want of notice 425. 428.
 in appearing he waives the want of notice. Bull 327

This case is settled, and what is in force
 the draft entered the set up, for draft and as
 has a right to notice. the direction of the
 it cannot be said can be explained. In
 order that, and if new trial cannot
 exist here the law appears at the time of trial

It is the mistake of the judge in fact and if
 the judge is in mistake and is in error
 the verdict is void and can be set aside
 notwithstanding any previous judgment

1 All 119
 1 N 244
 1 All 242
 Bull 321
 1 N 275
 4 N 710
 Bull 327.

In some cases new trials have been granted
 when the verdict was in error

1 N 300
 1 N 242
 1 N 275

Long 220

2.125 I have a new trial, however, for a mistake in
can in the judge if pasture is done
will not be wanted.

and the incompetency of a witness not
L.R. 717. objected to at the time is not a sufficient
Rakob 17 ground for new trial even tho the party
who ought to have objected did not
know at the time of the incompetency

Remains in the instance in Court new trials have
been granted for they were never
admitted.

11-6-6, 4

Over time 15 cells: 378.

11 Jan 3045 It is said that if a case has been lost
12K 77 by the testimony of a person legally
18+P4399 infamously a new trial will be granted
Lack 003 in court, but not in law

But this rule at least supposes
a case in which the objection was not
taken at the time of trial or in which
the injury was not proved at the time

It has been held that if a witness is called to prove a particular fact & is improperly examined & another witness proves the same fact & the fact is not materially disputed a new trial will not be granted. But this last circumstance alone is sufficient with the fact & if the fact had been ultimately disputed notwithstanding the other witness a new trial must have been granted.

3. For incompetency in jurors.

It is said that if a juror was liable to a challenge as incompetent but the fact was unknown to the party who ought to have challenged a new trial will be granted. 13 ac 466 (14 7 Mod 54. 1 Vent 30. 1 Wils 129.

But I think that the motion for a new trial will not prevail unless the incompetency of the juror went to the partiality. i.e. if the juror was not a freeholder.

This distinction is admitted in court.
See *Chancery* 129.

a Court motions in arrest of judgment
for incompetency of jury has formerly
concurrent with motions for new trial.

2nd 140. 4th The misconduct of a jury. 1814.
Stra 642. reference of the decision to chance
Bac 4th. same if one juror has been guilty of
to 14. any misconduct.
Ver^t h
5th 1375.6. Formally if the jury were not perfectly
Bac 4th. unanimous, there was a good reason
Ver^t f. for granting a new trial.

The rule still is in theory that if the
jury are not ultimately unanimous
there will be a ground for new trial
but an exception has been admitted
to evade the rigour of this rule
for now the infinitely are permitted
to remain silent & if they do not
object to it at the time when it
is put into effect they are presumed to
assent to it. Comb 14. Bac 4th to 14.
Ver^t h. Rule 14. 4th.

there requires the jury to be locked up. But the
by a proper officer & kept until they agree or at least until they bring in their verdict - not to liberty from the time they may not eat or drink

But a violation of this rule merely subjects the juror to a fine but does not destroy the verdict.

In our practice from the moment the jury retire there is no further control over them.

If the jury eat or drink at the expense of either party before the verdict is returned the verdict is void if found for the party who treated.

To relieve the jury from the hardship of
 confinement & abstinence from refreshment
 3/16/37 have been devised, in a verdict under
 3/16/37 up to the jury at his lodgings.

And at a prior verdict is not
 binding on the jury for on the opening
 of the case they may believe a diff.

verdict & the verdict is not in it must
 stand.
 3/16/37
 3/16/37
 3/16/37

If after a prior verdict at the jury
 11/12/37 eat & drink at the expense of either
 party they do not reject the verdict
 unless they change in favor of the
 party bringing.

Now verdicts are allowed in all
 3/16/37 civil cases, but in no case of life or
 3/16/37 member, nor in any case of felony. The
 3/16/37 jury in these cases must when they give
 3/16/37 a true verdict look upon the evidence,
 3/16/37
 3/16/37

It cannot be a prior verdict nor more than
 of 1 count R 401.2

A jury has no right to state to his
fellows any fact which he knows concerning
the case before them nor can he act
upon any knowledge of his own ^{conscience}
jury all know and fact must ~~be~~ ^{be} stated
under the oath in open court.
for both parties have a right to examine
& cross examine even witnesses (Vauq. 147)
3 B.L. 374:5. Bac. 4th ed. 114. 1 Edw. 1:13.
1 ell. 4. Val 238. In Court verdicts are frequently
set aside for this cause,

The jury have no right to examine witnesses
among themselves a witness who has
testified before them in open court.
if they do the verdict is bad

In Engl. the jury cannot take out with them
any written evidence not exhibited Bac. 4th
on the trial & they is the law everywhere and
this is receiving evidence not given
in open Ct.

And by the English practice the jury
with counsel & parties or leave of Ct.
may not take with them any written
evidence the exhibited in Ct.

But it has been held in the case of the
witness is evidence on both sides this
verdict is not ill but this is a very
vague & foolish rule. See also verdict
S. R. m 148. Cro E 411. Helled 250.

And the rule itself is the rule before
that seems to be a very singular one
but the Ct. allow the jury to take
the papers as matter of course.

In Court there is no such rule
the court deliver the documents as
of course & as matter of right.

12 R 11 When the jury have been guilty of a
misconduct while still within the verdict
401 But they are not permitted to give
evidence concerning the misconduct
Cro E 114. very famously.
5 Hae 211

But I could think that no jury may
give evidence concerning the misconduct
of another.

If the foreman delivers a wrong verdict
in mistake a new trial will be granted
if the other jurors may be incompelled
to give evidence of the mistake they may
undoubtedly testify 1 Burr 313.

A Court motions in arrest are concurrent
with motions for new trials for misconduct
of jurors,

It has been contended that if the jury are misled
by a mistake made by a juror in the trial
it is cause for new trial but they are not
law. But if the mistake found under these
circumstances is for an error of law
it is cause for new trial a new trial will
be granted

It is now true may be granted because
the verdict is against evidence 2 Ld Raym 1105 1 Ld Raym 1107
consp. Bac 908 tri 14. rather they power for
granting a new trial for this cause ought to
be exercised with caution & it was formerly 4 Ld Raym 1142
held that a new trial should not be granted 1100.
if any evidence supported the verdict but 2 Ld Raym 1107
now it is in the opinion of the Ct the verdict stands
if any evidence supported the verdict a new trial will be
granted.

2 Ld Raym 1107

7th cause is that the master is not liable
 that the jury have given they verdict under
 a misapprehension of law. The same cause
 between this case and some the past one
 agreed upon in the perfectly same & nothing
 changed but a question of law & the jury
 find contrary.

at Hayman 4th

Feb 1794

25th 5th That is substantial justice is done the
 5th 4th it will not grant a new trial, & if
 the 4th my friend for the defendant has a
 to a right to maintain same.

4th Jan 1795

1795.

8th Indemnity of damages is in some cases
 cause of new trial but only where the
 action is on contract for a sum certain
 or capable of being made certain. Where
 the damages are presumed a new
 trial for indemnity of damages never
 has been granted.

Page 327

But in this last case if the amount of
 the damages will afford presumption of
 partiality quare

Where the jury have made the damages too small this is a mistake in law a new trial will be granted, or if the Def has been deprived of damages by unfairness. but in these cases the new trial is not granted for the smallness of the damages so nomine. but for the mistake of law or for the misconduct &c. 425. 1259. Salk 647.

With exception of damages is a ground for new trial whether the verdict stands in reason or not. a tale. 17K 277. Salk 649. 2 Wils 244. 405. 3 Wils. 62. 1 Stra 641. 2. 5 K 157. 42K 657. 72K 529. 1 Burr 609. 3 Burr 1146. (Pam 617. Bull 322.)

It has been contended that a new trial is not to be granted for this cause unless the damages are so excessive as to afford a presumption of partiality bribery &c. but according to the later cases there is no necessity for this presumption if the damages are so excessive as to strike the mind at once as enormous. a new trial will be granted.

If however the action sounds in contract & the
 2 R 11:123 damages are repair the Def by releasing the 4 sep
 Ch B 213. on the record may prevent a new trial

1 R 11

Comp 57.

2 W 126 1857 367.

4 There are some actions founded on tort
 in which a new trial has been granted
 for excessive damages. It is better for
 some cases to accede to some a new
 trial can never be granted for this cause
 but it can be granted for this
 distinction. 2 R 177. 2 R 178. 1 R 189
 4 R 15. 2 R 15. 5 R 15. 1 R 15. 1 R 15

2 R 18 1857 no new trial has been granted
 for excessive damages.

1 R 177. That it may be argued that in some
 cases the damages are good
 1 R 17. cause for new trial.
 2 W 126.

1 R 177. That a new trial may in all
 cases be granted for excess of damages.

2 R 11

4 R 15

5 R 15

2 R 11 1827. 2 R 11.

✓ That counsel have made a mistake
in pleading has been an independent
with others for a ground for new trial
but it seems in Eng? that this is
not a distinct ground for granting
a new trial. 9 Burr 1385. 2 Str 104. 1 East 57
Wells 202:3. Pacette to Co.

✓ In Court mispleading is a substantial
ground for new trial &

✓ But the neglect of one's attorney is not a ground for
a new trial the party must take care.
But remedy of his attorney. In English. Talk over.
Counsel neglects to attend &c. &c. &c.
to Co.
Callaghan
R: 18.

✓ In Court new trial for mispleading is obtained by petition not by motion.
A motion at this day is not be sustained.

§ 4. if a material act is about by B. & C.
the same in practice if the other party is
then is a cause of new trial. B. & C. 10.
the act is a cause of new trial by agreement.

§ 5. however a material act is about
from his own negligence or mistake, a new trial
will not be granted. B. & C. 10.
unless the party is not the act is a cause

§ 6. new trial is now granted for the
cause where the act is done. B. & C. 10.
B. & C. 10. in the case of one diligence
on the part of him who makes the other
and the act is not a cause of new trial.
B. & C. 10. B. & C. 10. B. & C. 10.
B. & C. 10. B. & C. 10. B. & C. 10.

- That a material witness made a mistake in his testimony on the first trial is not a legal error on the trial, but as to the Rockwell, unless relevant.

the forgetfulness of the witness

- ✓ In a case of a material witness after trial in the Court by the law a full review for - on trial

under the law that the witness is not a material witness on the trial. The witness is not a material witness on the trial. The witness is not a material witness on the trial.

The witness is not a material witness on the trial. The witness is not a material witness on the trial. The witness is not a material witness on the trial.

- ✓ In a case of a material witness after trial in the Court by the law a full review for - on trial

The witness is not a material witness on the trial. The witness is not a material witness on the trial. The witness is not a material witness on the trial.

The witness is not a material witness on the trial. The witness is not a material witness on the trial. The witness is not a material witness on the trial.

The witness is not a material witness on the trial. The witness is not a material witness on the trial. The witness is not a material witness on the trial.

I intend, any kind of business practice
 in the party, or when from the contract
 is a by his other is left ground for a
 new bond. The substance is meant, any
 attempt to influence a party completely, or
 completely.

Wells 119
 West 125
 West 130
 E. C.
 1845 159
 1846 140.

I formerly held in full that a new bond
 could be granted in England for
 the party in England is not in charge
 in any other case. I England. I think
 the substantial party, being bond another
 England. I think 149 152. Due to E.

Ultra 1100. I think the new bond is that
 when the contract is for the party in new bond
 bond may be made in this as in any other
 other action. But when the contract
 is for the party in new bond is not
 a new contract for after party for
 a party that party in new bond is not
 not is when party is for the party.

Wells 119
 West 125
 West 130
 E. C.
 1845 159
 1846 140.

I think a new bond may be granted
 in England as in other cases, the new
 bond exists in England does not exist.

2 John R 401. St John Bapt to Gordon
✓ In the U.S. the determination of
things in St John the jury do not agree
they were discharged & a venire de novo
awarded & he was sent to prison for the
same offence & the St Lord that next
would not be required to answer before
the new jury.

✓ In Pennsylvania the supreme court
in precisely the same case decided
differently from the Ct in New York
look at the case

It thinks the decision in Penn
accordant with the law.

✓ For the more disagreement of the jury
at I think the jury were told the following
deliberate about the evidence they must
find a verdict or acquittal or hang
at least until the jury agree.

✓ But this may be one where from
pragmatic necessity the jury may be
dissatisfied. As the jury may be
prejudiced, taken with, in this case a
verdict de novo may be awarded & the
verdict set aside & a new jury

4. The ... of ... the ...
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4. The ... the ...
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4. The ... the ...
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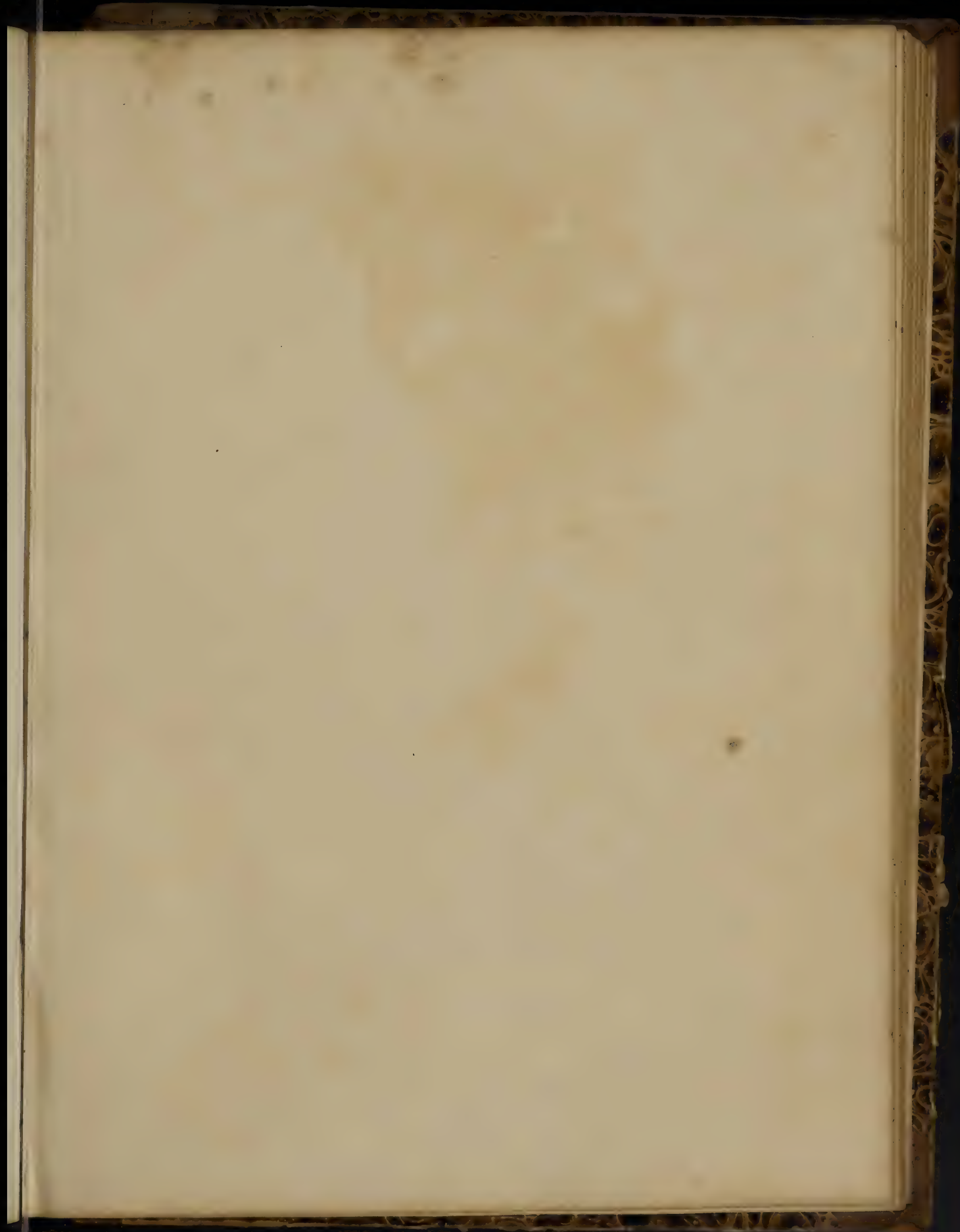
I do not practice - in some of the states
in which there is great need of a
lawyer - in the case the following is given
inserted.

Cost.

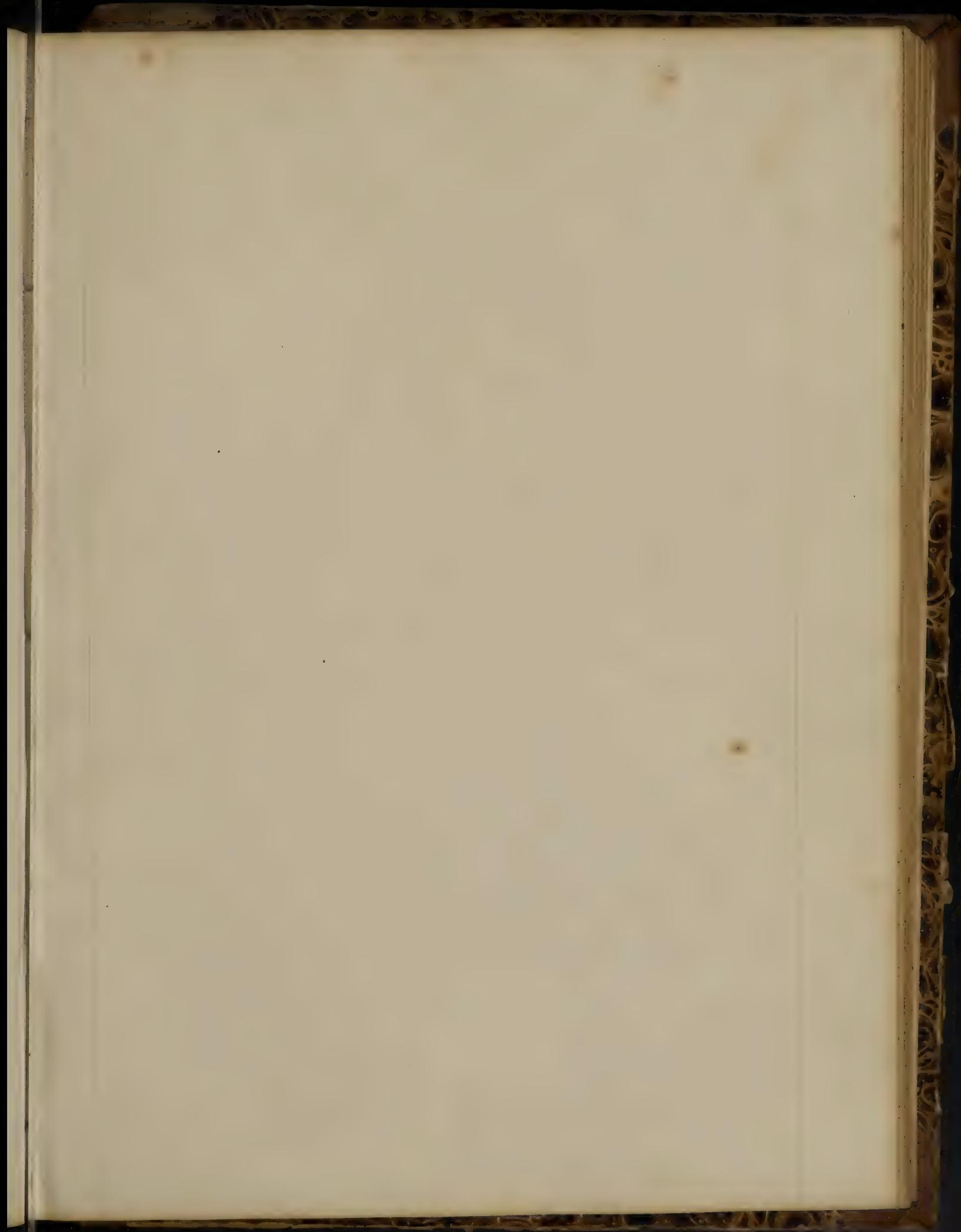
I do not practice - in some of the states
in which there is great need of a
lawyer - in the case the following is given
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✓ In some of the states in which there is
great need of a lawyer - in the case the following is given
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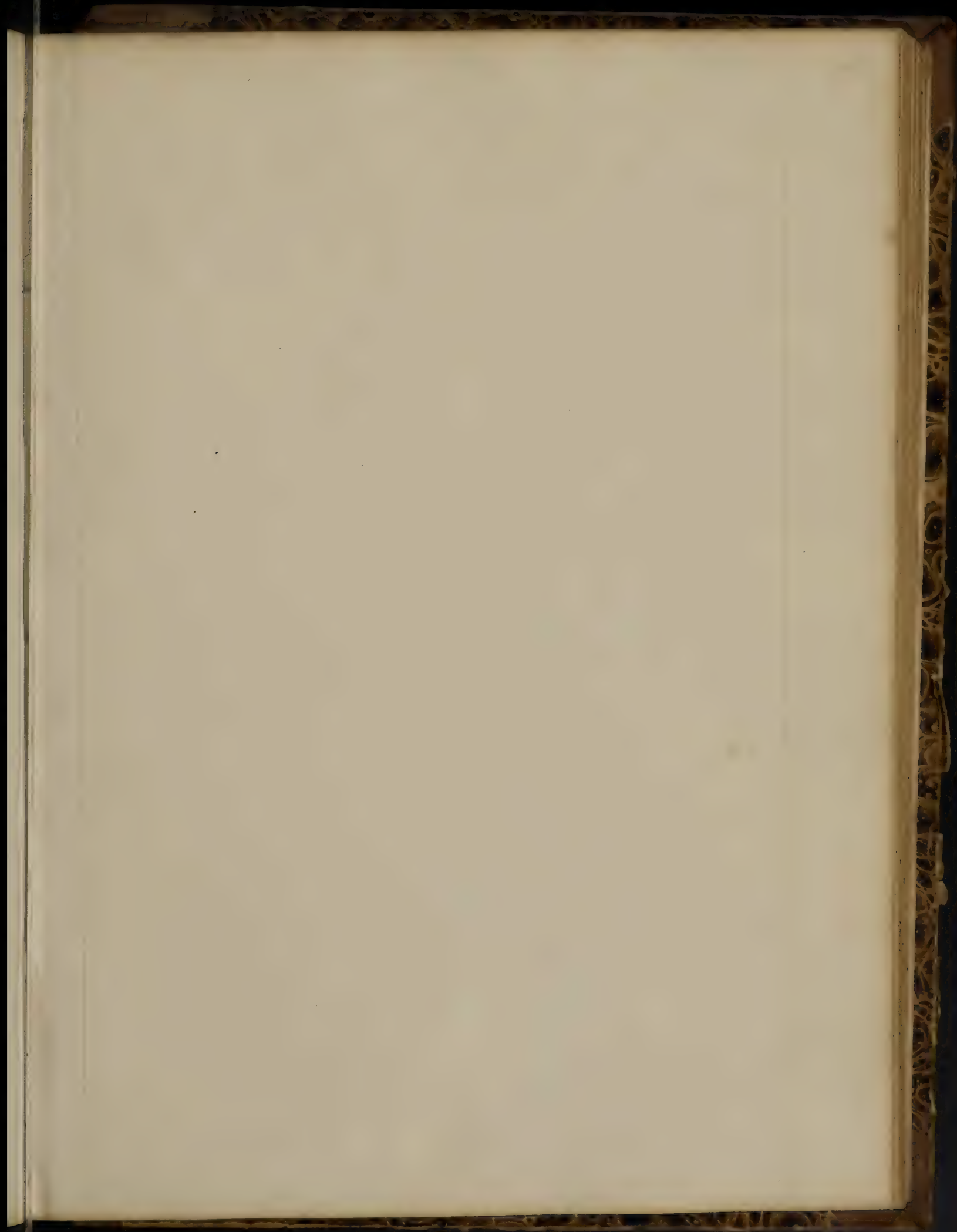
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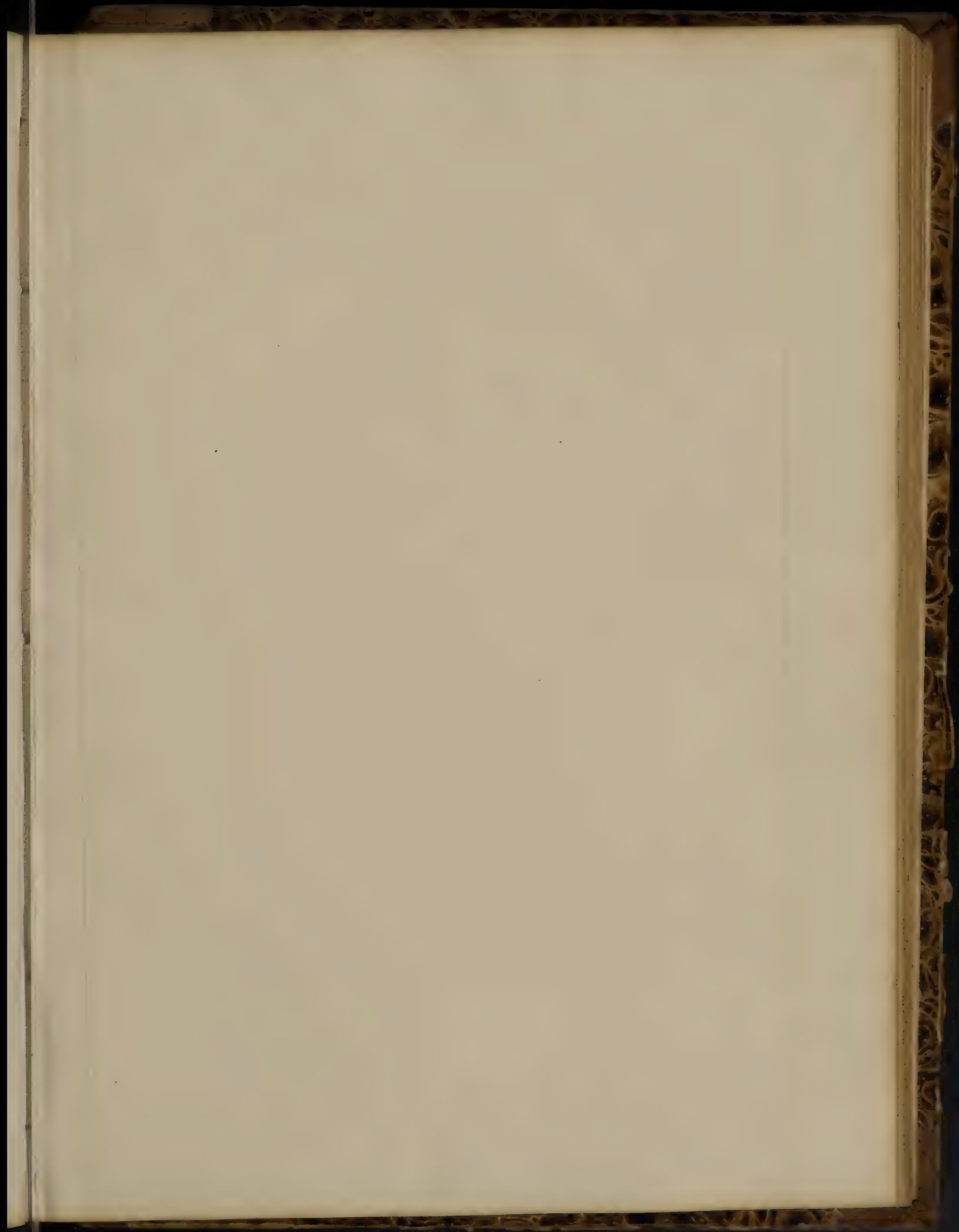
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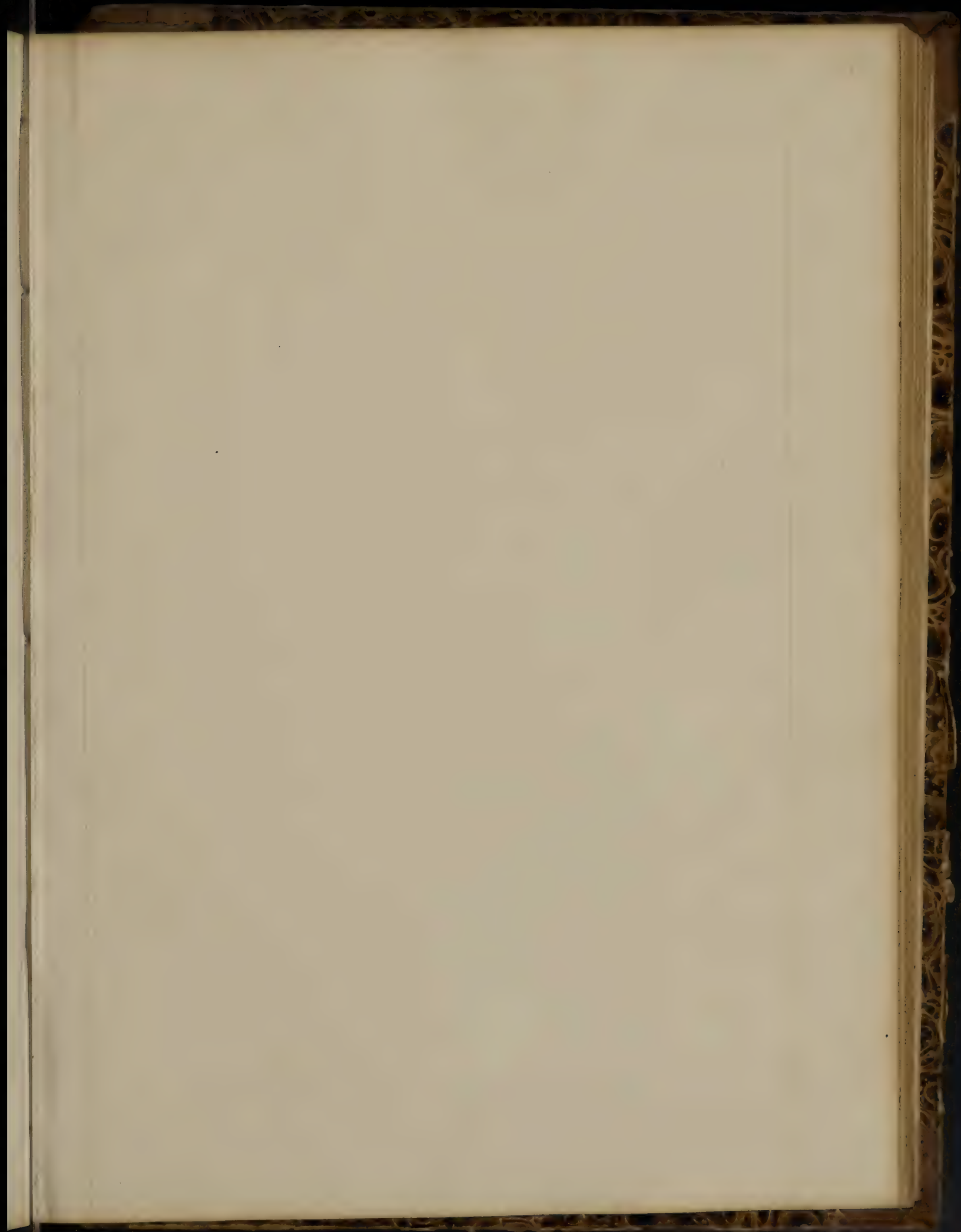
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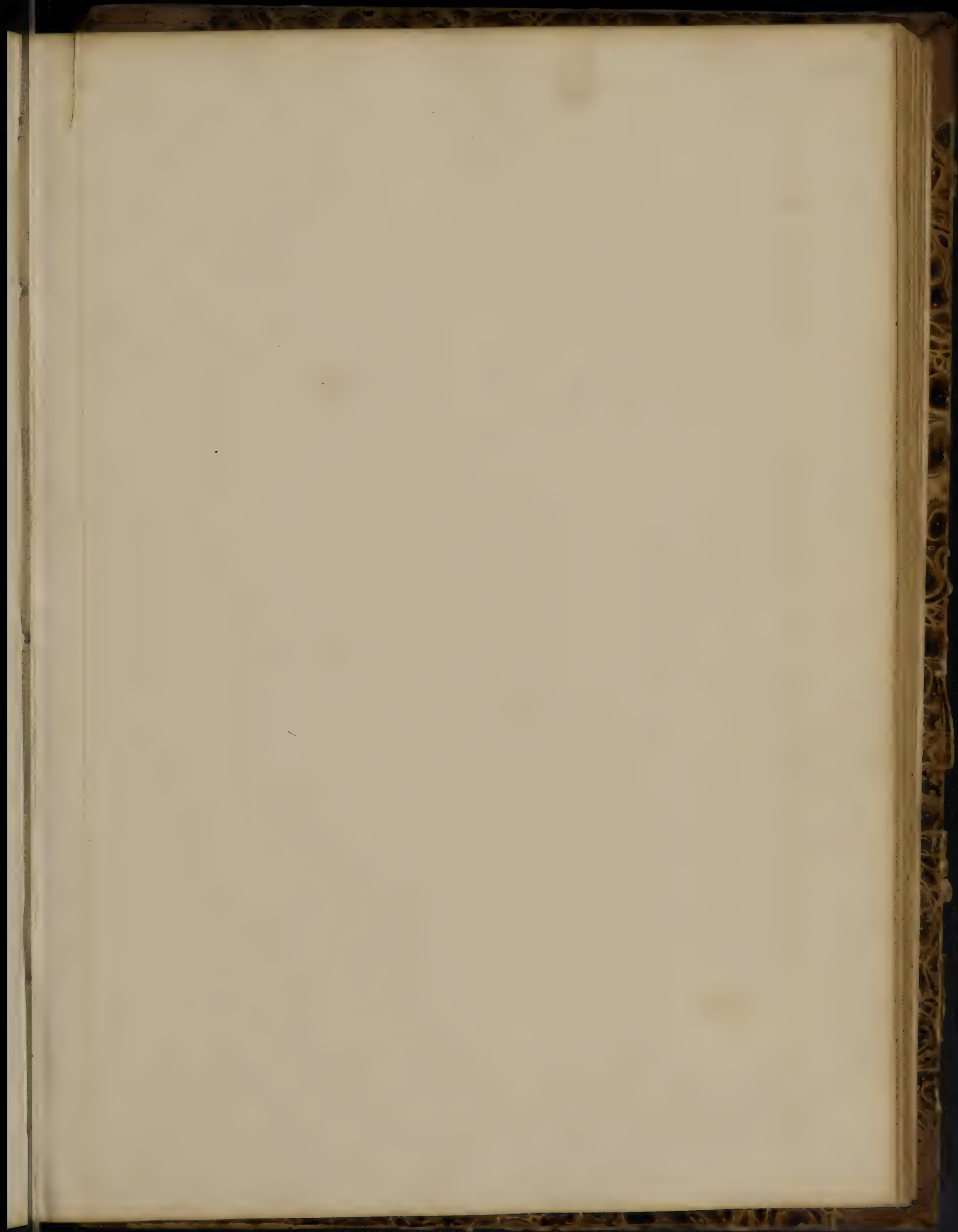
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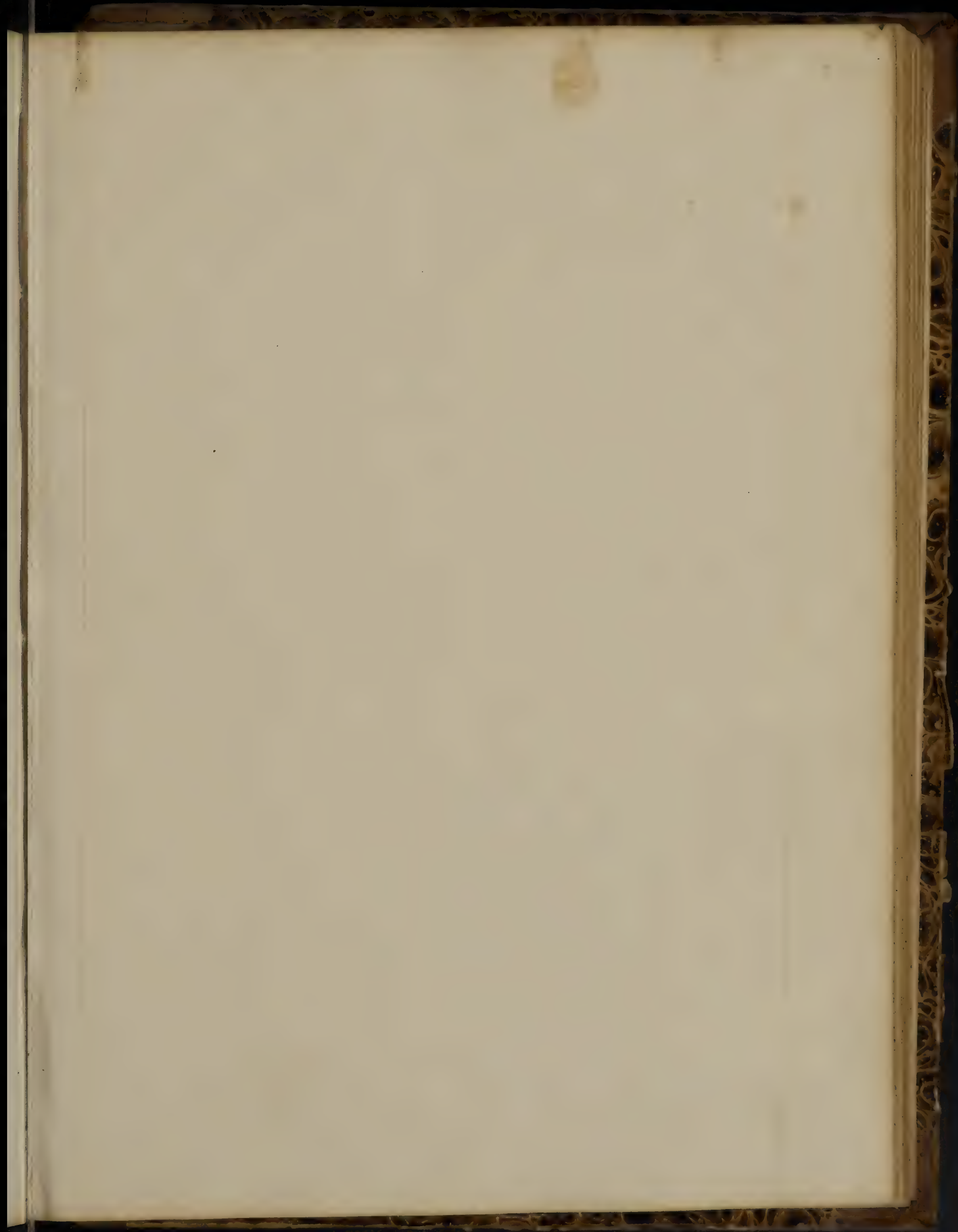
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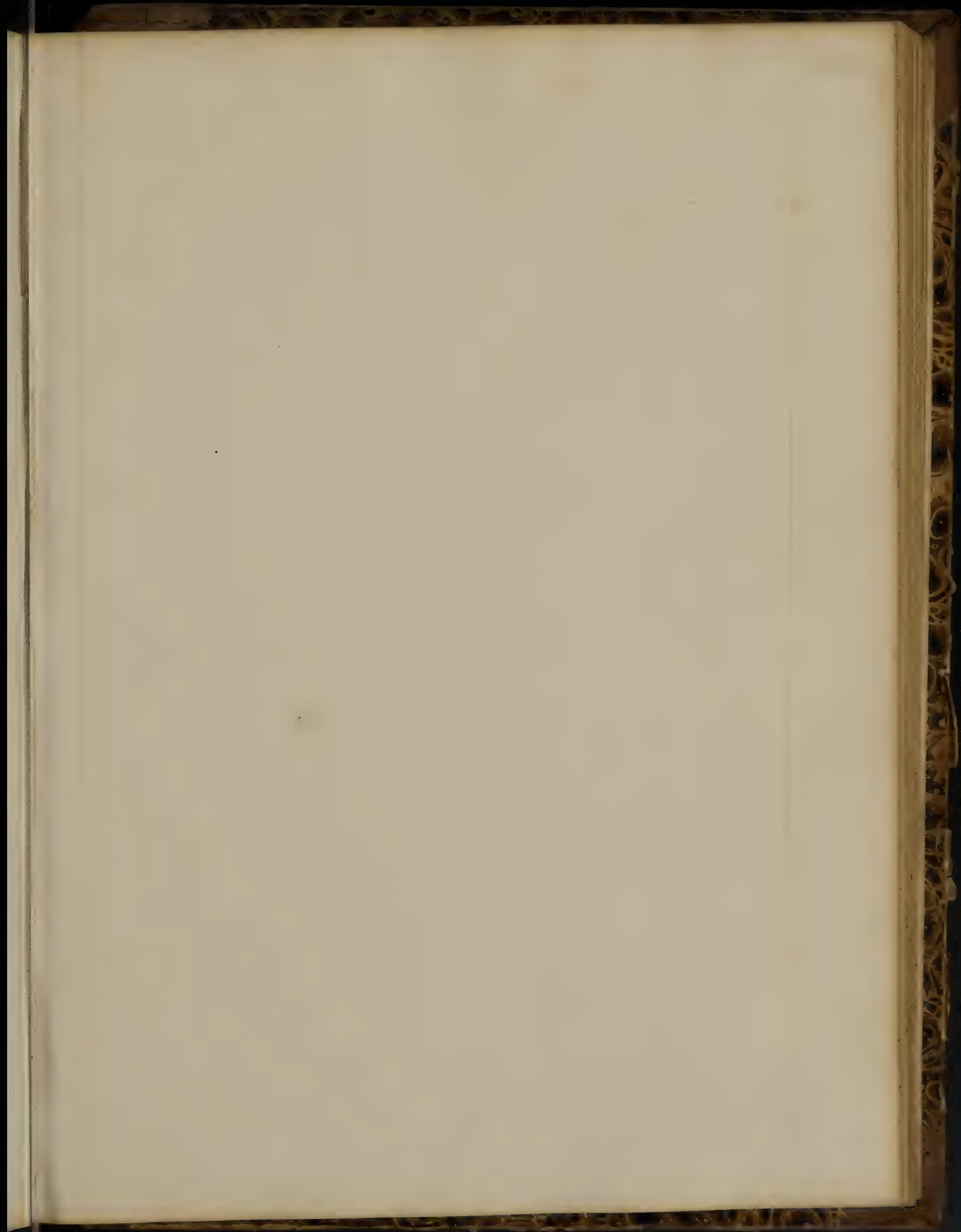
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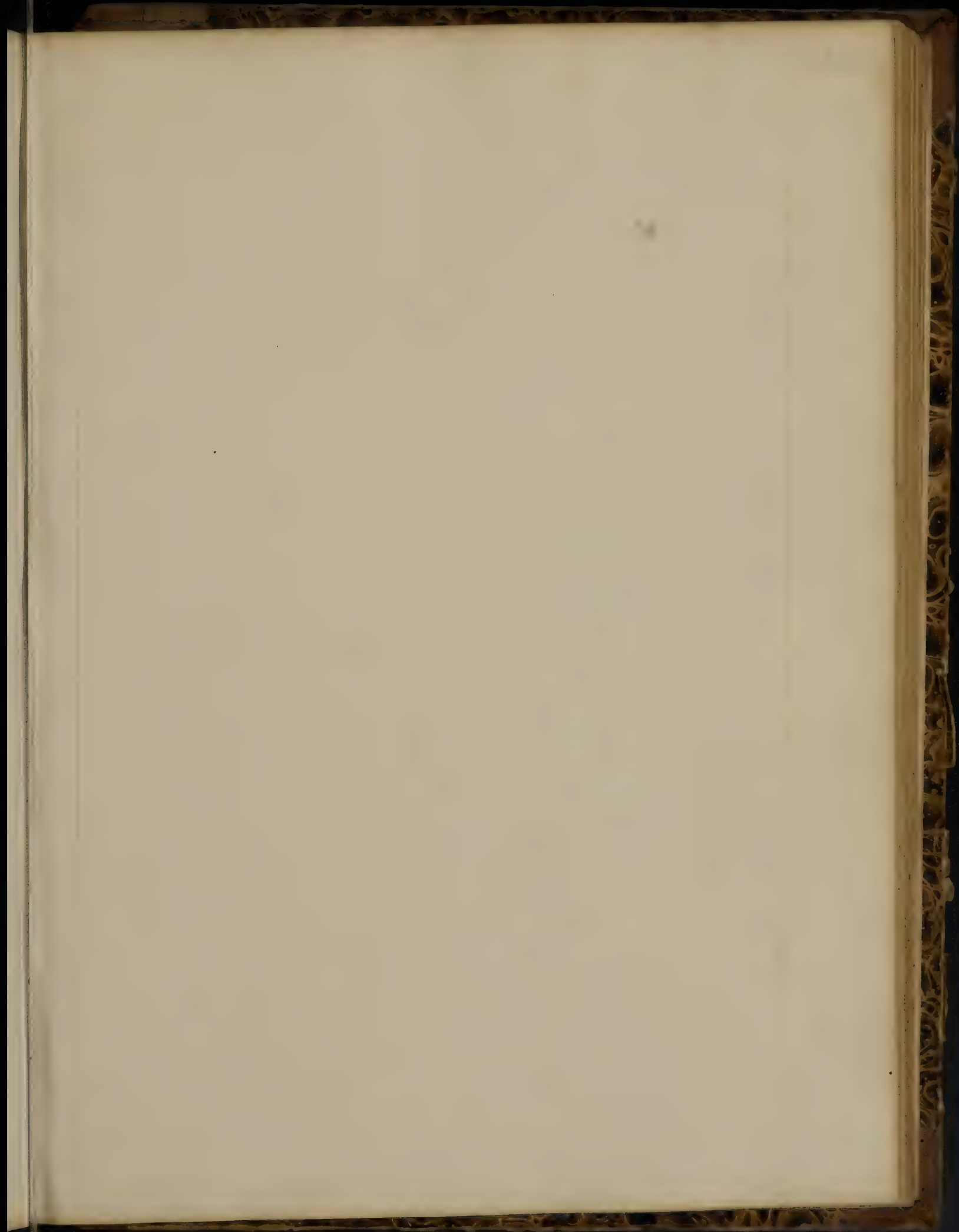
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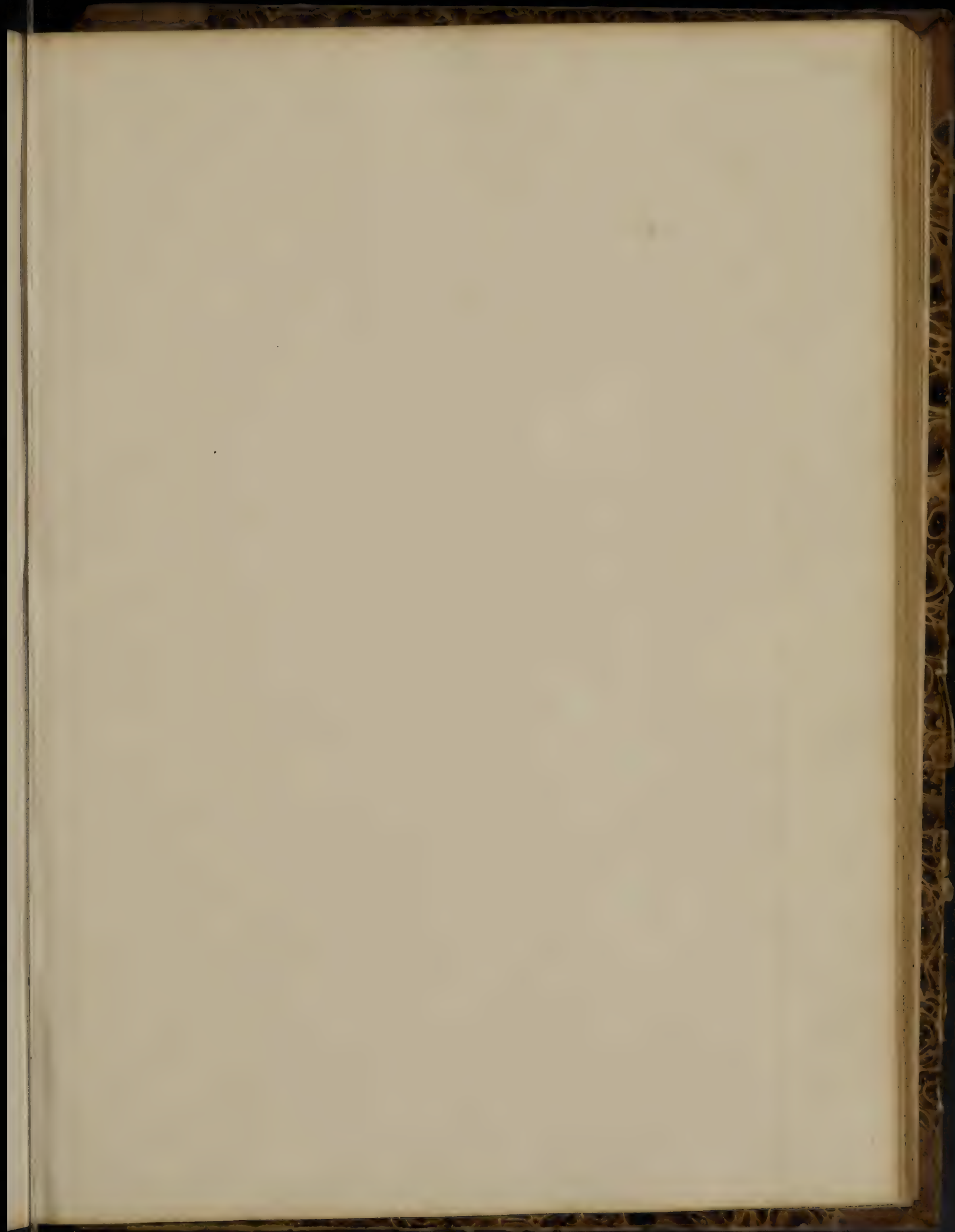
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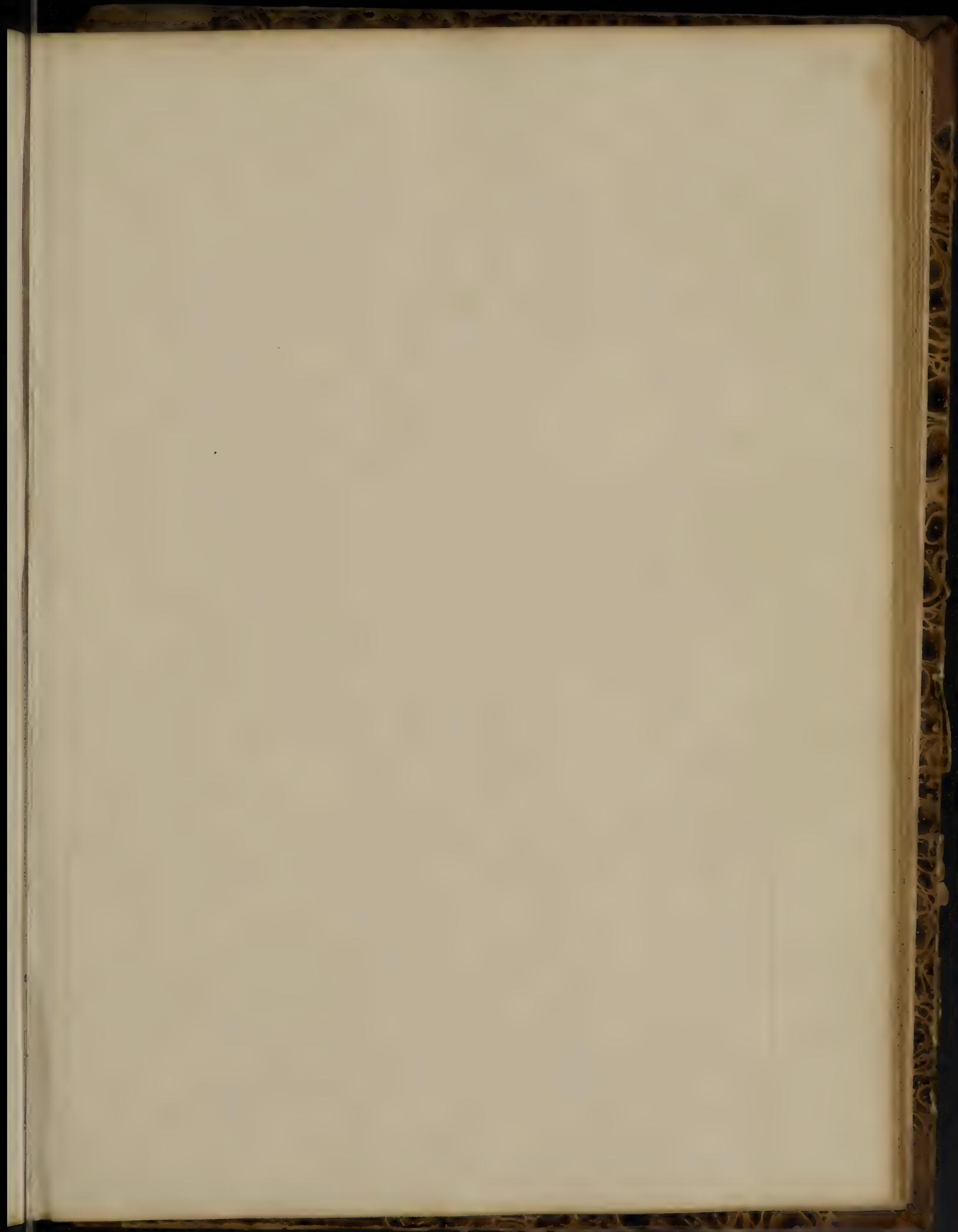
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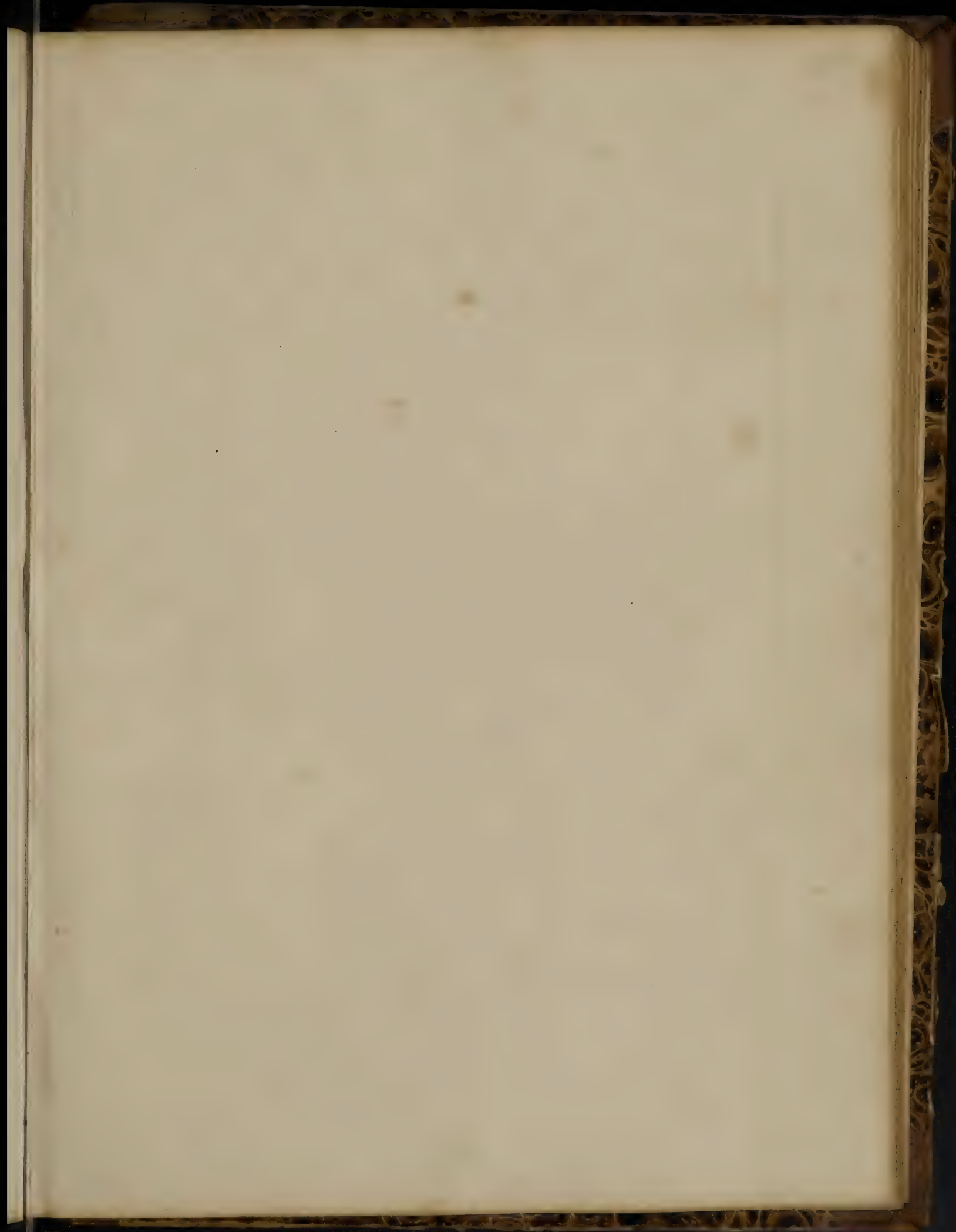
(328)



(330)



(332)



(334)

Distance (11)

The distance & extent of evidence are to be determined by the jury, the competency by the Court. *Langbein 406, 407.*
Black 213.

Where however is record is put in issue. *Black 213.*
 On the issue of non est word, the slight effect of the evidence is to be determined by the jury. *Langbein 406, 407.*
 On the issue of non est word is closed to the jury. *Black 213.*

But, when a word is put in issue incidentally & collaterally the word is not to the jury & it is always put in issue collaterally except in the single case of the plea of non est word. If in doubt a word is put in issue. *Black 213.*
 But in est word the plea includes the word. But in est word under not guilty the plea includes the word. *Black 213.*
 The word is introduced collaterally & is not in issue to the jury.

Neither party is bound to prove facts until
one is not relieved. Bull 1898. 1 Bull 2
Bull 5. 4. 5.

What either party has admitted in the
pleadings he never can deny in evidence
(Bull).

The same principle is regularly laid on the
party who takes the affirmative of an
issue. Bull 1898. 1 Bull 2. 1 Bull 155. 1 Bull 144
1 Bull 49. 4 Bull 53. 8.

To this, you will note there is an exception.
I where one is prosecuted for not doing
an act and he is bound to do the
act, then if he is an offender, for he
takes the affirmative to be proved
and is to presume a party guilty. Bull 7. 148.

Prohibited. Bull 1898. 1 Bull 158. 3 Bull 192
Black 211. 1 Bull 654. 1 Bull 151.

So if a man is indicted for not repairing a
highway & he pleads not guilty, he is
not bound to prove that he has
repaired the highway or must prove that
he has not repaired.

Again if a man is taken on the life of one
else, killing the man is on him who
spoke the death, for life is presumed
until death is proved either directly
or presumptively. Bull 151.

But by St of Bigam, & Sect 1st it is provided that after the absence of the husband for 7 years, and heard of he shall be presumed to be dead, the last 10.5 presumption may indeed be rebutted Ph 12 but this statute changes the mere simple presumption.

No evidence can be rec. under any Stat. H. B. 205 except such as is pertinent to the fact in dispute. Ph 11 12 upon a matter of fact in dispute all other evidence is irrelevant - Hence the character of other facts in a civil action cannot be inquired into Ph 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

In such cases the defendant
 supports his character by proving
 himself in the last case to be
 an honest man, for it does not
 conduce to prove or disprove any
 fact involved in the issue.

In cases where a party by it has
 allowed to testify in his own
 favor his character for veracity
 may be impeached, but it is his
 character as witness not as party
 which may be thus impeached.

9 Conn. R 172. But there are cases in which the defendant
 in complaint puts character in
 issue of course, & in such cases the
 witness character for continuity
 may be inquired into & particular
 acts may be proved. Bull 296
 2 Esp R 564. 1 Selw 301. 1857
 Bull Ex 113. 1 Ph 129. Peak 7. The object
 of this proof is to mitigate damages
 it cannot defeat the action.

That on the action the deft was not
 proved instances of his misconduct, but
 subsequent to his misconduct with
 him.

Sept
 1844
 1845

As in an action for breach of promise
 of marriage the deft was in mitigation
 of damages to impeach the ples
 character on chastity & on other
 particular instances of incontinency.

Sept 1844
 1845
 1846
 1847

But I think that the deft may prove
 the ples character bad in another
 respect as that the deft was in chastity

As where a master brings an
 action for the seduction of a daughter
 a servant the character of the
 latter for chastity may be impeached
 in mitigation of damages.

Sept 1844
 1845
 1846
 1847

1875. I have recently this one has been
found at a distance in England & very recent in
Rakko. The set of circumstances is to the
apparent and is extremely highly reasonable.
1876.

13 John 475. 14 John 238. 11 Ph Ei 1470!

Again in an action for malicious
prosecution the defendant shows that
the plaintiff's character is bad by
way of probable cause. 118 R. 220.
1 Ph 134. (1 Ph 147). (2 Stark 69. (1 Ph 147) contra)

But, the defective character is put in
issue by a civil prosecution only when
the prosecution charges a course or
habit of criminal conduct, &
indirectly in keeping a land house

But in an indictment against me as
a common lawman the prosecutor
cannot prove particular instances
with persons in time

Willard
2.16.1824
L.R.

But in great proceedings in which the
defendant's character is not put in issue Willard
the prosecutor cannot examine the defendant
the defendant's good character unless the
defendant has attempted first to prove
his character to be good.

Ex where the prosecution merely
charges a specific crime, then the
defendant's character is irrelevant.

But even if the defendant has then opened
the inquiry the prosecutor cannot
give evidence of particular acts
not included in the indictment
he is confined to good character
for the defendant has not done violence
as to particular acts. But he is
presumed to be prepared to meet evidence
as to his good character when he himself opens
the inquiry.

In a criminal prosecution evidence in support of the defendant's character may be particular as well as general. The witness may state the facts on which he founds his opinion of the defendant's character - but not so as to the presence.

I think that this rule is dangerous the relation of anecdotes favourable to the character of the defendant has too much effect on the feelings of the jury.

When the evidence of guilt is weak or presumptive evidence of good character is of great importance, but when the evidence of guilt is direct & credible it ought to have but little weight & in fact really does have but little weight with the jury.

The best evidence of all the nature of the case admitted must in general be produced.

This rule relates to the species or kind of evidence - not to the weight or strength of that evidence, it is for a party wishing to prove the contents of a deed he ought to produce the deed if he has it. If he has not it is secondary evidence & the contents of the deed cannot be admitted unless the deed is destroyed &c.

Aug 200

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as if a deed is subscribed by an attesting witness the ^{ex} of it can not in itself be proved without the subscribing witness. By testimony is considered as better than the party's own confession. -

excepting vide post

Feb 11 9

But the law does not require that all the evidence which might be shown be produced. If there are two attesting witnesses one is suff^t to prove the ^{ex} if believed by the jury in law one is suff^t tho' it is undoubtedly safer to have the testimony of all.

And in some there is no number of witnesses prescribed by statute to the proof of a fact. & therefore it would be possible to prove a suff^t fact by one witness. See 11th 107.

4th 358

called 104

called 137

1st 107 8

called 225

5129

1st 111

But in a case in which the witnesses are necessary to a conviction for if there are only two there would be both ^{ex} & ^{ex} But this rule does not require the witnesses in all cases it requiring that there should be some substantial evidence besides the testimony of the witnesses ^{ex} the ^{ex}.

So too in high treason, put & true, on the Foster 1400
 suspicion of treason by its two witnesses 111275
 are required but not so at ex the 21
 do like says it is a rule of the 21 Rakeword
 vide 5 R. 6. 1. 1. 1. 31. 2h 105. 412 356 -
 24th R. 25. 529. Ray 408. 18h 174
 East 2012

And in treason 111275 must
 testify to one act not a look to
 two distinct act not act. 111275 37:4
 412 357.

Under the constitution of the 111275
 to prove treason of the 111275 must be two witnesses to the same
act not or a confession in open?

This rule extends only to one act 111275
 of treason collateral fact may be 265.
 established by one witness. 111275
 treason the question sh. be whether the
 deft was an American or an Englishman?
 this fact might be proved by one witness

So in proving the fact that an act
 was taken may be proved by one witness
 the falsety may be & must be proved
 by two witnesses 111275.

to in question, if essential rights of any
Hale 245. hearing evidence is admitted.
Hale 12.

to in the question whether a particular
245 58. piece of land belongs to such a man
145 112. the hearing is admitted as the deciding
145 Reg 74. of a dec. Convent
Hale 11.

Hale 664 is written memorandum of dec. persons
Hale 12:13 in these questions where hearing is
admitted are good evidence

Hale 11. But any dec. or written mem^o is never
admitted if made at a time when it was
Hale 13. for the interest of the party making it
Sept 23. at the time to have the matter decided
Hale 121 is his dec. or memorandum.

245 55. He dec. if a dec. owner of land tending
145 478. to restrain the limits of those who
4/14/14. receive their title under him and
145 499. evidence but not if they tend to enlarge
145 507. those limits.
Hale 145

But it has been held that the act of
 10th 1800 written mem^{rs} of a dec^{rs} person who
 1st 1811 attended at the birth of a child is
 admissible evidence of the time of the birth.

18th 11 The same reputation of a family in
 place is good evidence in a question
 of pedigree as to the question of
 whether it is the legitimate son of the

18th 11 But these dec^{rs} are more admissible if
 10th 1800 the person who made the dec^{rs} is a
 18th 1807 and capable of being examined in Ct.
 1st 1810 and this qualification extends to all the
 cases concerning legitimacy. 11th 1810
 The dec^{rs} of dec^{rs} persons again are good
 18th 1810 evidence to show the state of a family
 18th 1810 as to marriages, births, deaths &c. &c. who
 18th 1810 was a father, what children there
 were of the family, what was the age
 of the children &c.

18th 1810 In the same manner entries in the family
 18th 1810 Bible the finding of a special verdict
 18th 1810 between other parties, monumental
 18th 1810 inscription &c. are evidence in the
 18th 1810 inquiring upon a copy of a statement
 made in a will afterwards cancelled.

Evidence &c.

But hearsay is not admissible evidence
of the place of one's birth. This is not
a question of pedigree & in common
presumption this fact may be proved
as easily as ordinary facts. It is
a question of settlement.

East 537.

1 Do 375

2 Do 270

63.

32 R 707

A written memorandum made at the
time of a transaction is a document
in the ordinary sense. If this is brought
in with other circumstances, admissible
evidence in other cases than in those
of prescription, custom & pedigree,
it is a written entry and made by a witness
a barrister of the 11th Jan his 1844. 1840.
-1841. It was admitted in evidence of the fact
the delivery of the bar. This is in truth
the nature of many evidence. But still
the principle is that the memorandum
forms a part of the transaction.

But there is an important exception
to the rule and it is, that in cases
of homicide with circumstances, or any species
of homicide.

The death of the party slain is not an
essential element of the offence, and it is not
necessary to prove the death of the party slain
in order to establish the offence. The
death of the party slain is not an essential
element of the offence. The death of the party
slain is not an essential element of the offence.
The death of the party slain is not an essential
element of the offence. The death of the party
slain is not an essential element of the offence.

But the death of a person is not an essential
element of the offence, and it is not
necessary to prove the death of the party slain
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of the party slain is not an essential element
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But the death of a person is not an essential
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necessary to prove the death of the party slain
in order to establish the offence. The death
of the party slain is not an essential element
of the offence. The death of the party slain
is not an essential element of the offence.

But the party need not in turn
express any apprehension of apprehending
death. It is sufficient if it can be inferred
that he was apprehensive of apprehending
death from the circumstances of
the case. See 12 113. See 12 113. See 12 113.
See 12 113. See 12 113. See 12 113.

The question then whether such an apprehension existed or not seems to be a preliminary question to be determined by the Jt before the deors can go to the jury such as in 563

But the decision of the Ct that such an apprehension did exist is not a conclusion on the jury this is the case in the analogous case of a bond so claimed to be lost & assigned to the Ct to be lost in that secondary evidence of the bond is admitted, 1000 313 & such as in 314, 397, 563.

If indeed the Ct should determine the other way the decision is conclusive, the evidence of the deors could not then go to the jury.

§ 244 Any deors are admissible under the 1st. same circumstances in civil cases. As in 1st 188. where a man under apprehension of death declared that a certain will was forged by himself.

again what a due party has sworn
on a former trial is between the
same parties, may be proved by any
witness who heard him. And if the
action is in fact if the subject matter
& parties are the same. 11 C. 217.
5 B. 470. Foster v. 337. Peak v. 2 B. 475.

But this rule is said not to hold in
criminal cases, tho' I can see no reason
for the difference. Peak v. 40.

• Again what an absconding witness
has sworn before a Ct. of inquiry in
a criminal case may be proved of
the deft. process, the absconding of
the witness - is the rule applying to
defenses to an inquiry before a grand
jury. 2 B. 400. 11 C. 217. 20 C. 15.
East 373. Root 76.

Admission of a party
What other of the parties are acknowledged
18103 will submit to the point in question being
which may be proved by the other party
187

18104 That the acknowledgment of a party is by
18105 its own confession in some of its writings
18106 acknowledged himself indebted to and that
from that he was not indebted
And an acknowledgment not under
18107 seal may be denied, the an writing
18108 to fully satisfy. So a man might
ack. Receipts however who voluntarily may writing
in full the but was the not under seal today the law
yours R

18109 A confession must be taken in question
18110 with the oath was said at the same time
18111 and yet the jury are not of course
18112 bound to believe the whole they may
believe what they have reason to believe
to disprove the rest

But a party is never allowed to enter his own real-estate in favor of himself except when they constitute a part of the ex grates. It is not a title in fact made at the time of the deed, but the gift is complete - so when a person is named in the deed as a party, and in making the deed, may be proved by him to be in his power.

It is a necessary act may be explained in the same way at the time but the object of the deed as to his intention is not admitted. Trust M.
John R. 10. Ex. 1816. Vol. 1 173. 77

And in one single instance what the debt should be in a suit but before any may be given that in evidence in his own favor. Ex. 1816. in case of making a proposition what the debt should be in the grand jury may be given in evidence in his favor about to be probable case.

It too what the debt should be in the suit may be given in evidence in his favor.

The confession of a party in word is
evidence not him even in a case in which
he is merely trustee. 4 R 602.
1 R 21. 2 R 11.

The acknowledgments of the party
beneficially interested may be given
in evidence in a case by his trustee.
1 R 171. 1 R 172. 1 R 173. 1 R 174. 1 R 175.
2 R 176. 2 R 177.

When a party is a stranger to the
contract of other party made in the
presence of the party, and among the
witnesses, and he is the party, and
makes such inference from it as they
please. The law requires the law to
have been introduced at the time
by the party of whom the contract
was made.

But the law of a stranger to the
contract is not in force. The law is not
the same as the law of a party to the
contract. 1 R 176. 1 R 177.

The same collection holds with respect
to the fact of an interference between
the parties. &c.

18th 11

In the fact of a bankrupt made at the
time of his leaving home with regard to
the nature of his absconding from
evidence in favour of a act his absconding
to prove the act of bankruptcy. But
he said he was leaving home that he
did might avoid his creditors.

18th 11
18th 11

It is an action by the law on a policy
of insurance for the life of his wife
her death regarding the state of her
health make at the time of the insurance
an good evidence but not her actual
death - See from medical

The rule will be the same if the
insurance was on the life of the son
father &c.

To be a prosecution either civil or
criminal for a battery the defendant must be
partly injured at the time while he is
suffering & receiving his pain and
admittable for this is the only mode
of determining the pain the defendant
is from inability his subject's declaration

When a party to a suit represents or stands
in the place of another person the confederate
in the latter are evidence not such party
as confederate or tutor not only but
successor not the heir.

In an action against the sheriff for an escape
in some cases the confederate of the
sheriff is that he must be the
sheriff for whom he was appointed
a good evidence not only for the
evidence of the sheriff and the
escape - the sheriff is the person
stands in the place of the sheriff

To be an action against the sheriff for a false
return he must be shown to be a false
person the same rule holds the confederate
of the sheriff is a good evidence of truth
just as the sheriff. Ex R. 1044. 4 Ash. 100
Ex R. 1050

It has been shown that in an action
for an escape out the 2d. where the
issue was suffered by the Deputy the
relief act of the report that no
escaped one escape was in consequence of the
diff. State of the action. 1840. — 1841. 1842.
1843. 1844. 1845. 1846. 1847. 1848. 1849. 1850.

But the rule is now as it ought to be that
only the deeds of the Deputy and from a part
of the transaction are admissible. (Pp)

To show a party to a suit, showing a
witness in virtue of something like the
completeness of the case and his own
bill is evidence against the party.
improvement.

To show a party to a suit, showing a
witness in virtue of something like the
completeness of the case and his own
bill is evidence against the party.
improvement.

It is a general rule that when there are several debtors to a debt the confessions of one of them is good evidence against himself and not against the others. Stimpert

Thus in an action against ^{one of} two joint & several debtors the confession of either the debtor not sued cannot prove the indebtedness against the other.

But if one of two partners is sued for a partnership debt the confession of the other partner that the debt is owed such a debt is evidence against the one sued. For the partnership being established each is agent for the other the promise, acknowledgment or payment of one are such in both. But the confession of the one not sued cannot be used to prove the partnership.

And the rule is the same in the case of a partnership if the acknowledgment or payment had been made after the dissolution of the partnership.

Stimpert
Stimpert

Aug 21. 012 4 ft 6 inches is a contrast being found in
 12 ft 6 inches the appearance of a soft sap to the
 20 ft the tree out of the at if the following were shown
 25 ft 10 in as a result
 30 ft 10 in for the contrast being admitted 10
 35 ft 10 in to show that the nature of the material is
 40 ft 10 in perhaps indeed the condition of the wood is
 45 ft 10 in 340 in not wanting to it has become

But in case of some & that the comparison
 of the 4 ft 6 in is the evidence of a soft

50 ft 10 in that in case of some combination the
 55 ft 10 in combination being found the condition
 60 ft 10 in of one more at the time of the material
 65 ft 10 in transaction concerning the nature of
 the party are good evidence of a soft

If one of the couple suffers a disfigurement - the
other should be able to bear it. The wife was left
left may be given an allowance for the family
planning for the purpose of supporting family

In such cases also the wife of the
party out of it is entitled to a pension

Widow's
Pension
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And it is also noted that proof of
the death of the person who was married by
any person shall amount to the person
following a certain act the person

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But a person who is entitled to a pension
shall be liable to pay the same in full
if he is not a member of the pension
fund

And a person who is entitled to a pension
shall be liable to pay the same in full
if he is not a member of the pension
fund

But a person who is entitled to a pension
shall be liable to pay the same in full
if he is not a member of the pension
fund

12. At 11.00 am in middle of anti-
 - the person then came in writing
 - Magnitude is made out as 1.2
 2.4 and 0.5. 1.0. 1.37. 0. 2.04 2.2 -
 No such stat now. I think that
 the new will be

Evidence No 31.

There is a real material distinction
between an admission of complicity & an
offer of compromise. Such an offer can
never be offered, in evidence either in
civil or criminal cases. A man must be
permitted to live peace with his conscience.
His defense builds the witness is limited
and.

(Hollingsworth v. United States, 22 U.S. 375)

But the admission of fact made during
a threat of compromise is not within
a 5th rule. 1st R 143. 2d R 475.
3d R 11. 4th R 5. 5th R 24. over the objection
that the evidence is irrelevant does not
apply.

And the acts of a party may be an
admission to an admission of him,
as if one acts as an innkeeper when
the law requires innkeepers to be appointed
by a particular board &c if he is
presented as an innkeeper he cannot
deny the character. 1st R 20. 5th R 67 2d.

And it is a good rule that if a
person holds himself out to the public in
a particular character or capacity to
avail himself of the benefits of it he
cannot deny that character when it
is against him. The last is fact. 2d R 67
1st R 20. In these cases the rule is to
an admission conclusion when the party
5th R 4. 5th R 12. 1st R 24. 2d R 20.

if one party treats with another as building
a particular structure - then, as a
consequence thereof he shall not lose
the situation of the person from whom
he thus received a benefit. If I sold
to B the use of a patent machine
B took the machine & used it. B then
infringed the patent because it was not
the inventor. But if it had been B
must pay

Presumptive evidence

Presumption is an inference from certain facts proved or admitted in the evidence of some other fact or facts. Direct evidence of a fact is that evidence which cannot be true consistently with the non-existence of the fact in question.

Presumptive evidence is a fact in the evidence which may be true consistently with the non-existence of the fact in question.

Ex. It has sustained an injury & can prove that B threatened to do this injury. This is presumptive evidence that B committed the injury.

But these presumptions of fact from fact may never be rebutted. *Bank v. W. 10 All. 6.*

The doctrine of presumption has lately been applied to a great extent especially to the quieting of long enjoyed possession. *210.*

Long undisturbed adverse possession of an incorporeal right ^{as a right} ~~as a right~~ affords strong presumptive evidence of its commencement of the right. *1844. 10 All. 630.*

This rule is founded on the principle of quieting possession by long standing where the subject is not within any state of limitation. *Bank v. W. 10 All. 630.*

This presumption is to be treated
as conclusive & that the jury are
bound to find in favour of it.

sup 12 In order to warrant the jury in
finding a verdict in pursuance of
this presumption they must in
point of fact believe that the right
had a legal commencement.

In case of easements rights it is held to
tho' against the Statute limitation
has applied the principle of these
presumptions.

A right of way is one of the rights which
in virtue of this presumption may be
acquired. If it has been in the habit
for 40 years of passing over the land without
licence or permission the jury must
find a right to the right of way
from the

the nature of the thing from which it is taken
If a debt has been assigned to a third party
- that is a good title to the debt - (see 12th ed. 1871)
11th ed. 1871. 1871 - The law is now
regard to the assignment of a debt
the 12th ed. 1871.

It is not necessary to show that the
- thing is a debt - to show the
performance of the debt.

If the delay is satisfactory, no matter
for the result, the presumption is that
the debt has been paid in full.

1871
1871
1871
1871

It is not necessary to show any receipt of the
debt in the debt - the receipt is the receipt
- the receipt is the receipt - the receipt is the receipt
interest. 12th ed. 1871.

It is a good instruction to the jury
is a statement in the debt.

1871
1871

How far is interest to be given evidence of the debt
part payment. If made within the time, 1871
year when it was due, the interest of the debt is
obliged to make it. It is good evidence. 1871

But if the instrument was made by 1871
the obligor after the twenty years it is
no evidence.

Conf 103
12 R 99
State 24

If a C^t entitled to a debt payable by
instalments gives a rec^t for any one
instalment this furnishes a strong
presumption that the preceding
instalments are paid - So of rent -
But this presumption may be rebutted

Conf 104
State 24

Where length of time short of the period
prescribed by a C^t of limitation, in
cases to which the C^t refers is now suff^t
to furnish any presumption of the
extinguishment of the right.

Conf 105
2 R 123

Length of possession alone is never a ground of
presuming a title to land for the stat for
has regulated this matter by the length
of which the right of entry to be made. If
stat says the right of entry shall be 10 years
a married woman is divorced & the marriage
continues 40 years or more at the time may enter
within a year after the divorce has
the divorce cannot say that from her
40 or 50 years before the jury may
presume a title for him

Still length of possession may be circum-
stantial evidence in favor of title to
land connected with other circumstances
as when a party enters on a conveyance
to resist and when some fact material to
a good title cannot be proved long 2 Count
a short possession is a circumstance from which
the jury may presume that the conveyance
was not good. By sale by collector of lands 2 Count
where notice is cannot be proved. In the former
case the presumption is not conclusive the child-
ren in this case must believe that a good
conveyance was made in the last case
where that notice was only given by the
collector.

Copy An actual notice between it and the
may be presumed from the long and ample
possession of one of them with access
for the purpose of visiting in the State a
timetabling - here the mere fact of
possession raises the presumption & the
presumption is the foundation of the
claim for as to it but the it is
conclusive does not run with actual
notice.

All evidence is written or unwritten
and written evidence is in three kinds. Public
Records public documents, and records
& private writings.

A record is a written memorial of
the laws of the state or of the proceedings
of justice according to the law of the
state.

Book 21.

Book 24.5

A record cannot be contradicted for it
is a public writing and every man is
bound by the public writing.

But it will be seen hereafter that
there is a way to contradict a record.

If however a record is made in error
or in a case in an unauthorized situation
any objection may be made by law. Book 24.

But evidence is not admissible to
prove that an objectionable record makes
a record cannot be made. Book 24.

And any evidence may be admitted
to prove that a writing purporting to
be a record is no record.

the pretence, date of a writ may
be proved when it is necessary for the
purposes of justice 2 Barch. 24.
Rule 27th

it would cannot be moved from place
to place hence copies of records are
the regular mode of proving the
contents &c in cases Lib. & Bull. 25th
Rule 28th

Lib. & Bull. 25th. Hence it is a rule that when
shown in a public paper but keep in evidence a
Rule 28th copy of it in evidence.
Rule 28th

But the copy is a copy is no evidence
at all, nor is it authenticated, for
the best copy is not shown to be
authenticated in evidence Rule 28th
Lib. & Bull. 25th. Rule 28th

But there are some records which cannot
be kept at all. Records of the
Rule 22nd public acts in a legislative assembly are
Rule 22nd preserved to be shown to all & of
course to the judge - a great error
is made when it is said that it is to
aid the memory of the judge not to
prove that a particular law exists

But private stat. must be proved
like other facts or other writings in
evid. &c. & there are many others & follow
as to be proved by copy.

Edw. 1.
1282
R. 122
R. 127

And a printed stat. book is no proof
of a private statute. for a stat. book
is nothing more than a private
unauthenticated copy.

R. 122
R. 127
R. 128

If however the legislature declare that
a stat. in its nature private shall
be deemed a public stat. it is to
be taken as a public stat. in the
Ct. & therefore it needs no proof
the stat. book may here be used to
aid the memory of the judge.

R. 127

Copies of the acts of the legislature
are to be authenticated by the
certificates of the Sec. of State.

In our practice the record of a
Ct. of justice & then copies are to
be certified in the Clerk of the
Ct. & where there is no Clerk by the
judge.

By the law of U.S. if an exemplification
authenticated by the Clerk or Notary
of a state it must be accompanied by
a certificate from the Clerk of the Court or
Notary of state that the person authentic-
ated by the proper officer is the
the record of evidence the original U.S.

By U.S. law copies of office records sent
appertaining to the records of a state are
evidence in another state if authen-
ticated by the Keeper of the office with the
seal of his office if any - & if accompa-
nied by the certificate of the Clerk

Evidence of
Records are of 4 kinds. 1. Exemplifications
under the great seal.

2. Exemplifications under the seal of the Clerk
to whom the record belongs.

3. Office copy. certifies by an officer
appointed by the state for that purpose. But
not under seal.

4. A sworn copy taken by any person
& compared by a Notary or Clerk to
its original.

Rev. 24. 31. U.S. Ball 222.

Notes

simplifications under the great seal
are of themselves unlawful and are
not regarded as evidence by courts
- therefore the only evidence that
can be admitted under the plea of
not guilty is that which shows the
great seal is a copy of the original
and the original is in question
But if the plea of not guilty is
a negation of the copy being the
best up by entirely

Notes
copying
18th 19th
centuries

copies under the seal of the court are
the highest evidence in law, but the
for except under the great seal are
are unknown. these are of higher
authority than office copies. it is an
error

Notes
copying

But also the copy is in some cases
a series by the plea of not guilty
and the copy therefore is in question
the best copy of the original
is the best

But where a matter is one of inducement and the witness cannot be persuaded. Bull 230. 11th Nov 28. 1845. Thus if in fact the prof found his lie on a judge? but the record cannot be reversed and not guilty will be pleaded & the intention of the question if the record is admitted to the jury & how a question of proper evidence to the jury.

Office copies are grantable only by an
officer of the land appointed for that
purpose & copy they grant is
evidence in itself & is admissible
with any collateral proof the
attestation of the officer makes
it per se evidence. — The copy of
a deed then attested by com-
missioner of the land. Lib 23. P. 10. 4
B. 229. Page 3, 3.

But a copy certified in an off.
not interested, by the in. to certify
it is not possible, would

That the word is in your power
 But only by a copy of it may be shown
 that the word is not a new word
 what is your evidence of its existence in
 the old language? (Gill 17. 13)
 I shall be
 the 11

When a word used is not used the
 it will not be a new word. I am
 aware of it. (Gill 17. 13) (Gill 17. 13)
 2. (Gill 17. 13)

when in your copy it is not used in
 the same way as in the old language must
 be of the same word. (Gill 17. 13)
 (Gill 17. 13)

1. (Gill 17. 13)

For and not above a word in a
and not is evidence

In and a word evidence in title
in a circle and is evidence and is
between the parties to it & the
privies. Case 1st. Case 2nd. Case 3rd.
Case 4th. Case 5th. Case 6th. Case 7th.

Privy in the law. Case 1st. Case 2nd.
Case 3rd. Case 4th. Case 5th.
Case 6th. Case 7th. Case 8th.

Privy in estate. Case 1st. Case 2nd.
Case 3rd. Case 4th. Case 5th.
Case 6th. Case 7th. Case 8th.
Case 9th. Case 10th.
Case 11th. Case 12th.
Case 13th. Case 14th.
Case 15th. Case 16th.
Case 17th. Case 18th.
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Case 95th. Case 96th.
Case 97th. Case 98th.
Case 99th. Case 100th.

Privy in law. Case 1st. Case 2nd.
Case 3rd. Case 4th. Case 5th.
Case 6th. Case 7th. Case 8th.
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Case 95th. Case 96th.
Case 97th. Case 98th.
Case 99th. Case 100th.

Privy in representation. Case 1st. Case 2nd.
Case 3rd. Case 4th. Case 5th.
Case 6th. Case 7th. Case 8th.
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Case 91st. Case 92nd.
Case 93rd. Case 94th.
Case 95th. Case 96th.
Case 97th. Case 98th.
Case 99th. Case 100th.

The party rendered in a 2d cont.
 resolution directly upon the ^{matter} ~~present~~
 coming afterwards in issue is
 1st 1127 successive evidence in favor of
 1128 2d the party to the first judge
 1129 & then proving.
 1130
 1131
 1132
 1133
 1134

There is a final judge has been given
 in a suit the first can be called
 in question only in the course of
 law as the trial of E. Bill in equity
 appears to be 1135 1 day 170.

It cannot then be impeached in any
 collateral action, 1136 1137 1138 1139
 1140 1141 1142 1143 1144 1145 1146 1147 1148 1149 1150
 1151 1152 1153 1154 1155 1156 1157 1158 1159 1160
 1161 1162 1163 1164 1165 1166 1167 1168 1169 1170
 1171 1172 1173 1174 1175 1176 1177 1178 1179 1180
 1181 1182 1183 1184 1185 1186 1187 1188 1189 1190
 1191 1192 1193 1194 1195 1196 1197 1198 1199 1200

In such a case the mode of taking
 advantage of the first judgment is to
 plead it in bar as an estoppel.
 In apt it may be pleaded under the
 joint issue. Rep R 60.4. Pake c. 34 &

But if the right claimed in the second
 action was not determined in the first,
 the plea in the first is no bar. This is
 the first action was non-suavit. So if
 the first action was proper in its kind &
 some material allegation was omitted, so
 a judgment in favour of the Plf is conclusive of
 a debt as! the debt was proved & then
 true whether the first judgment was on verdict
 demurrer confession or default.

2 Vent 103
 Pake 7
 Rayn 472
 11 Mod 112
 2 Do 318.
 6 Mod 107
 2 H Bl 107
 Bull 200
 1 Bay 170
 2 H Bl 34.5

If then after judgment reversed
 the defendant undertakes to recover the
 or it is cannot for the first,

2 H Bl 107
 Bull 200
 1 Bay 170
 2 H Bl 34.5

How can the Deft maintain an action
1843.3.15. left the p[er]f. for fraud in obtaining
a judg. as subornation of perjury.
1843.3.15. John [unclear] holds of same ill [unclear].
1843.3.15.

Henry & Mr. Furland v. [unclear] 1843.3.15.
See note 1843.3.15. 7. R 264.

And if a party being sued for a debt
1843.3.15. says it still saying that he says it
274 & reserving to himself the right of
1843.3.15. questioning it he cannot recover it back
1843.3.15. the true principle of the rule is that
the money was voluntarily paid & is not
non est. I think the
prevalency of the rule makes no difference.

Evidence 1. 24

What is in the first section the 2^d section his reply to it. I have not yet been able to find the original in the original of your own. Doubtless, there is some article.

Whether a given point or subject of
the same nature is or is not in issue
must appear from a comparison of
the records but whether the same
point was in issue must be proved
separately. Ex. It was B on a bond
dated 1 Jan'y for \$100. payable in one
year & afterwards it was B on a bond
of precisely the same description. Now
on the question whether these bonds are
the same must be proved by parol for
there might have been two bonds of the
same tenor.

It is a rule between the same parties
in a subsequent suit when the point
arises in the first suit
conclusively in issue as when
decided in the first suit.

Reake 156
Rell 236, 24
Linn 222

In an action on a policy of insurance
 434. how the question of compliance with
 434 a warrant to neutralize the record is
 434 a C. of demurrer is conclusive. the the
 434 question has come collaterally in good -
 Long v.
 434
 Bull 144

The judgment of a C. upon a matter not
 incidentally cognizable by that C.
 434 is no aid in a subsequent action
 between the same parties. It in an
 action of ejectment Df is found illegit-
 434 imal this is not conclusive in any
 subsequent action between the same parties
 for the record merely shows that the
 Df was guilty or not guilty.
 the action does not directly involve
 the question of neutrality. illegitimacy
 to prevent further participation

Again the need of a primary or secondary
new evidence of a fact materially significant
by argument from a fact in the
first action or from the fact in the
first action. Peake 43. 70.

It may be on a part material question. Peake 43. 70.
on the fact of a fact materially significant. Ball 232
in a subsequent action where the same fact is
the action is present the same in both
cases even the title was present question
in evidence under the same fact is
the only question between the parties new
the fact cannot be seen in evidence
to prove the fact of the pre-existing
fact in the first action.
For the same fact is material to
the immediate cause of complaint is
the same.

But the verdict in the first action
is not conclusive in a subsequent
action. But I dislike this rule

Ball 232
St. 301
43.
5. 11. 31
2. 10. 32
Cont. 77

A prior verdict may be introduced where the
causes of action in the first & second action
are diff. But a judgment can be introduced
with relation only to the cause of action
decided by it, from a judgment merely
resolves a matter of legal right

the rule is the same in our courts of
Hake 37. In a prior action of assumpsit, a verdict
Hunnington not judgment is introduced in a subsequent action
subject 21 for the parties are diff. & the title is
diff. But the verdict may be given
it is said in evidence but is not
conclusive. But this is a generally rule.

In our English courts no action is
evidence in another between the same
parties. See evidence R 276

West 246. But it may be in the same action
284. 288. has been distinctly put in issue of course
166. in a prior suit between the same parties
this finding is conclusive & may be
pleaded as an estoppel. This rule
supposes the title to be conclusive of the
second action if found

A verdict & a judgment are very different things
& as evidence they have very different effects. &c.

A prior judgment upon the point in question
in a subsequent trial is a statement of law West 1109
deciding the right. Sec. 5

But a verdict is only evidence of a
matter of fact which was decided in a
prior case. It is not fact it is an inferential
conclusion but it is not evidence of any
right.

But a verdict is more conclusive unless it is a substantial
question, pleaded by way of set-off. See West 1109
when a verdict is given in evidence see West 1109
the point upon the question is then to be materially
relevant or law material & then when
the matter of evidence is stopped or
such.

But a judgment given in evidence upon the
point upon in affirmance is conclusive.

4. pro judg when available at all
Rule 45 as evidence is conclusive between the
parties to it & their privies for a
judg. determining a right & must be
conclusive of that right.

Rev 235.

1 Day 170

Rule 44 and they will hold as well where the
Rule 44. pro judg is shown in evidence under
the pro judg taken it may properly
be taken given in evidence as if it was
specifically pleaded.

Verdicts may in many cases be given
Rule 29. in evidence where they are not
Rule 32. conclusive. But they will hold in them
Rule 44. even only in all the same of action
in the first & second cases were not the
same. for if the first & second cases
are the same judg in the first action
is conclusive & where the judg is
conclusion it is vain to talk about
the evidence afforded by the matter.

Rule 132

Rule 29.30.

12:5

Rule 44

11:1.

South 79.

11:1. 5. 11:25:26

2. 11:25:26

11:27. 2. 11:27

When two pieces of land are taken under
the same deed a verdict in a piece
action of ejectment is evidence in
a subsequent action for the other piece.
the not conclusive evidence - both
actions must of course be between the
same parties.

11:27. 2. 11:27. 2. 11:27. 2. 11:27. 2.

Alphonse a pour servir a l'entree pour
a l'entree a l'entree a l'entree a l'entree
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30. 4. 55
30. 4. 55

So a verdict in the case of the
question - for the state of the
practice with the case of the
practice of the case of the case

30. 4. 55
30. 4. 55
30. 4. 55
30. 4. 55

It is said in the case that a verdict
can be given in the case of the
the case of the case, the case is that
it cannot be given by the case of the
case of the case the case of the case

30. 4. 55

In general a plea of judgment is not a
plea of fact and is seldom raised
between the parties to the first suit
than previous. And, having been
in general not bound or affected by the
record of a prior suit, they do not
examine or cross examine witnesses or
produce them, a review the judge of
wrong is.

Bill 1845 To the same rule is that as the Benefic
Society of the rule ought to be mutual then
Bill 212 persons cannot take advantage of the
Bill 21 record against one of the parties to it

Bill 1845. That it is said that this rule will apply
Peake 31.9 not held universally. Now that one who
Ld. Ray 20 is going in set-off from a party
Bill 1845 recovering in judgment may see that
judgment against the same party. yet if
the judge's verdict had been against the
party in set-off it is said that the
judge is no evidence against the party
ex A+B are witnesses men claiming under the
same deed A brings judgment against B & recovers
it is held that the verdict against B is no evidence
in judgment against A, but that if judge had
been against A & then A had brought judgment against
B the verdict would have been evidence against A
in favor of B.

But Ld. dislikes this rule.

When we find any one more than two, we
ought the same to be the verdict in Page 15
the first case is evidence but not
conclusive for a verdict on Page 16
of a single.

So verdict in trespass of A. who trespasses
as servant of B. is evidence that B. is
conclusive in trespass by the same person
as A. who trespasses as servant of B. for a
repetition of the same wrong. Page 17
(247, 8)

When the point in dispute is
question of public right a verdict Page 18
giving this point either way will be Page 19
evidence in a subsequent action between Page 20
other parties. In Public right of way. Page 21
evidence only tells. In some verdict finds Page 22
it the duty of a parish to repair a Page 23
road.

But in none of these cases is the verdict
conclusive. — For as the right is public
any individual is bound interested in
that right and they are deemed the
not parties on the verdict to be parties
in interest.

Another ship

The sentences of the above judges
are in some cases in great coincidence,
and are upon all the points. As the
points are not. 1. N. 100. 424. 2. N. 121. 424
611. 3. N. 205. 2. Act 261. 2. B. N. 477. 1124
should be 211. 242. 328. 654.

A sentence relating in some
manner to a subject in the subject
is in the nature of a conveyance -
a transfer or a passing of the title
for ever, like an ex parte title - by the
sentence of the court of admiralty
actually transfers the property as much
as a bill of sale. When sentences
relate to a subject and do not contain
the disposition of the ship, they
only relate to the cargo, &c. Such sentences are
not a disposition of the cargo, &c. & do not
transfer the property of the cargo, &c. but the
disposition of the cargo, &c.

When any matter determined by
a court of law is incidentally in question
in a civil case or a court of law or equity
the sentence is conclusive.

If a ship is libeled as being a
prize & the prize is condemned, and
if a salvage action is brought on a
basis of insurance of the ship & the
question is on the amount of maturity
the sentence is conclusive that the
amount is false. This question of
maturity must always arise incidentally
when a ship is at all in a court of law or
equity. For it has the obligation

The rule has been said to be the same as to the having the probate of May 1780 in the granting of letters testamentary. 24 712 the statement of the Ct granting 32 R 125 probate a letter of admⁿ is conclusive 235 in all civil cases, & by some in all Prob 780 crim^t cases.

Ex in an action by an admⁿ the best thing that the Plf is ex^a the probate is conclusive that the Plf is rightful executor.

At B was indicted for forging a will & the best produced in probate of the will. the Ct held that this was conclusive that the will was not forged. Tr 411 703 Leach C 240 Amb 761:2

In this case it was held that the sentence passing the will was not conclusive but here the testator was alive so that the prerogative of the crown had no jurisdiction. 20 R 1414 aid 103 32 R 125

In this case which was in the last criminal case the sentence was held not to be conclusive - but here the probate was obtained by fraud on the Ct. 1. 11 4430 32-50-61

So Starbuck has lately denied the applicⁿ of this rule to crim^t cases for he says the King Ct. not be a party. 1 Ph 247 King 11 Gibson 112 (2d 205)

So in fact the judge of the prerogative
 And 186. It is in fact an act of submission is
 702:3. conclusion of the same question arising
 Ante 44.8 incidentally in a C. of law a county.
 Ante 50.8 & concluded upon all points.
 45.27 I am in effect put claims in line
 702:4 at law of 18 dec. the sentence of
 the prerogative & affirming is annulling
 the 801. the marriage is conclusion
 10th 225
 Ante 7/12

So in an action for crime on the prin
 sentence of the prerogative & annulling
 the marriage is conclusion of the law
 and a sentence the other way is
 conclusion of the law 186.

Ante 11/12 Again in an action as a man
 for a debt due from his wife while
 the sentence of prerog. & is in fact
 is conclusion.

Sentence of the King is in nature of
 proceeding in rem, the estate themselves.
 Besides a full determination at law
 a receipt under the sentence of
 the prerogative is not a decision
 it is not a prior judgment at law
 not unless the judgment is in the
 name and is between different parties

That it may always be shown by the
evidence that the defendant was obtained
by fraud or other means or by collusion
between the parties.

Rule 70th

110 240

110 202

When a judge in a plea that from Rule 23
part is a plea of the cause of action till 18
or defence in a subject that the Rule 30
word may be given in evidence. See
for a case in a situation. See Aff. Rule 59
having been surety, has been John 57
compelled to pay for the debt
of his principal & afterwards
the principal he must pay
in evidence the judge and plaintiff
not to prove any of the facts
proved in the first case but
merely to prove that he has been
compelled to pay such a sum of
money - it is merely to prove that
a recovery has been had, not how
the record is one of the facts with
constitutes the surety's right of action.
So if ship has been sold for an escape
suffered by his debtors & then the ship
disputes but the record is no evidence
as to the dispute that there has been any
escape or that the ship in the first action
had a right to recover.

Ex again it has been solicited for
the testimony of his servant. In
the master's action agt the servant
the record is sufficient to show that
there has been a recovery of a
particular sum agt the master &
that is all.

Ref 71

It former action & satisfaction by the
M^r agt a stranger for the same
matter in demand in the same suit
may be proved by the record of the
former suit. If the court is told
that the M^r has recovered agt one & has
lost the other the latter may recover
that the M^r has been satisfied for
the last time the prior judgment.

There is a party to a suit in the name of a
party in a suit which is a party to a suit
to show that the party is a party to a suit
the party is a party to a suit in the name of a
party to a suit in the name of a party to a suit
the party is a party to a suit in the name of a
party to a suit in the name of a party to a suit

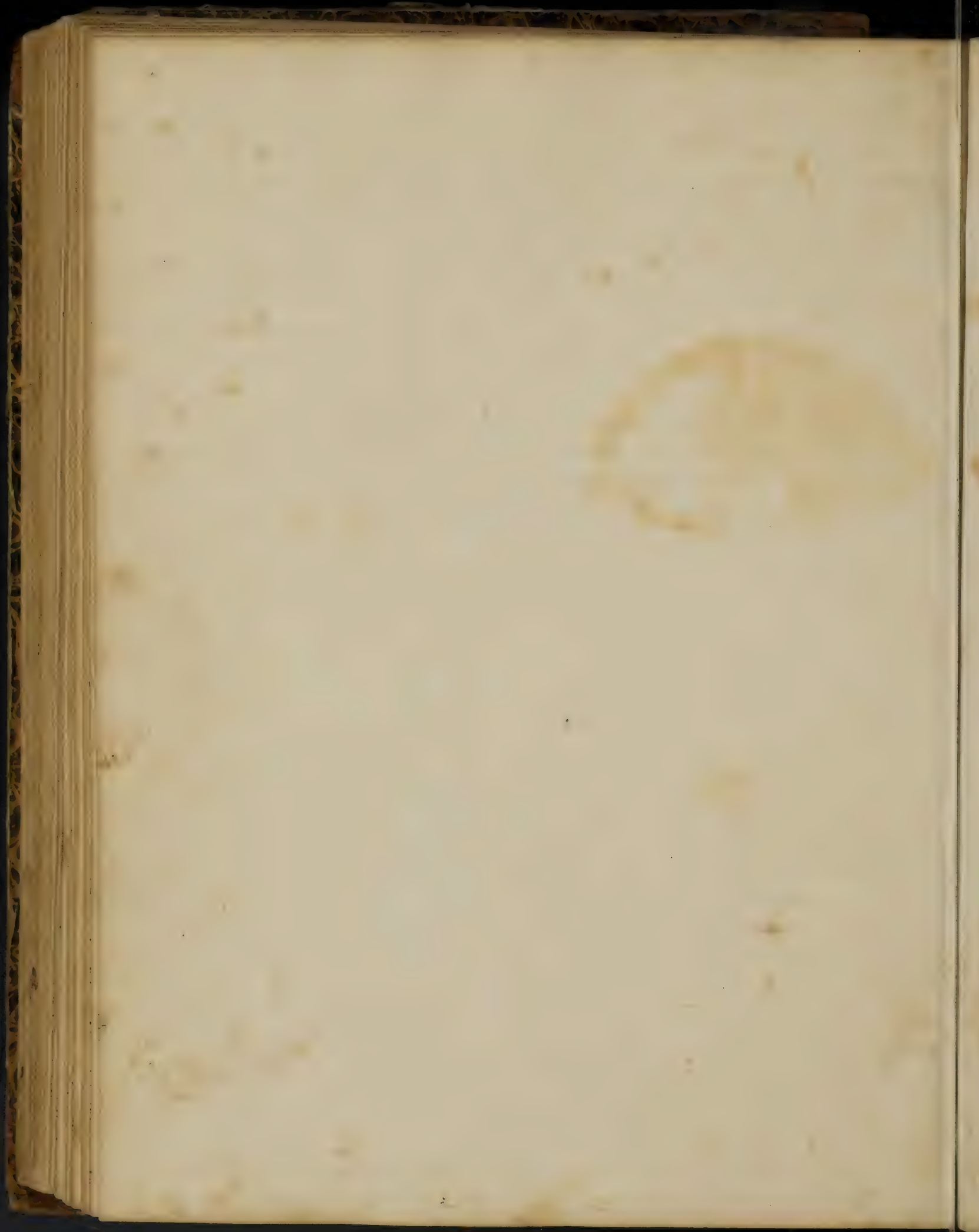
There is a party to a suit in the name of a
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party to a suit in the name of a party to a suit

That the name of a party to a suit is a party to a suit
the party is a party to a suit in the name of a
party to a suit in the name of a party to a suit
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party to a suit in the name of a party to a suit

The act of the proceeding of the court
sought the word of the law in the
and proved however to be the wrong
act of our own state.

Under the constitution of the U. S. the
rights of man in other states are
the same as in our own state.

Jan 1852
Mar 400
May 400
Jul 1100
Oct 1100
Dec 1100
Jan 1100
Mar 1100
May 1100
Jul 1100
Oct 1100
Dec 1100



Continued

Public records not records.

These partake of the nature of records.
They constitute evidence in & of themselves. 2004
They are the highest evidence of records. 2004
Records to the law records are not records. 2004

They are also records. Records are records.
Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.

Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.

Of this nature are the records of the legis-
lature. 2004

But the records of the legislature are not records.
Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.
Records are records. Records are records.

The allusion to the existence of a bill of
exchange is not words. Hall 255.
Litt 481. Page 556. The then are as
high evidence as words of the bill.

It can't mean.

But a bill in court is only evidence
of the fact that such a bill existed
& of such facts as may be proved by
himself. Because the allegations are
sworn to as the word of counsel to
enable an owner they are no evidence
of the party stating them. 5. R. 282.
157. Page 12. 54. Litt 4210. Hall 255.

But the bill in court is only
evidence of the fact that it is a
confession to the most solemn kind.
Litt 421. 255. Litt 4210. Hall 257. Page 12.
This answer comes to evidence only
on a confession & is evidence only
when a confession by him in a bill
form is to be evidence.

Where an answer made by a defendant
is no evidence agt. the infant in
a subject matter by the infant
or the confessions of trustee.

Conte 74
Wall 257
Conte 72
S. 102 257.

An answer by one of two partners in
a suit not ad. him if it is evidence
agt. the partner in a secret case
but not ad. him by B. Long 629. Whitecomb
v. Whiting. Ch. 13. 259. See R. 203.
Parker 55.

The whole answer must be
produced & shall be. 11th 50. 2 Kent. 94
218. See 34. 557. See 257. 259. 218.

But as the party whose answer is
produced in law is affected by
the admission he is entitled to the
benefit of an allegation in his
favor. See 507. - 11th 50. 218.

one of the most of the noble history
of the world. Feb 5 1878

It is a very interesting account of the
time period of the American West
it is a very interesting history to be read
by anyone who is interested in the
history of the American West of course.
Feb 5 1878. 1878. 411. 1878. 1878.
1878. 1878. 1878. 1878.

Below Substantiated was a paper with an
outline of the same. The same paper was
in the hands of the same person who
gave the information of the same.
Feb 5 1878.
1878.
1878.

Feb 5 1878. But the section of a map may be
used to show the same. The same paper
was in the hands of the same person who
gave the information of the same. The same paper
was in the hands of the same person who
gave the information of the same.

Before the bill is introduced, the bill is
not taken under consideration in the House
and the bill is not read, and it is not a
supreme rule.

2000

2500

But when it is taken in consideration of the
bill is the bill is not to be read and
the bill is not to be read in the House in
the House.

2000

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2000

But the bill is not taken in consideration
and the bill is not taken in consideration
and the bill is not taken in consideration
and the bill is not taken in consideration.

2000

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To introduce any of the bills which
have been introduced in the House, the bill
must be introduced in the House
the bill must be introduced in the House
the bill must be introduced in the House.

That if a bill is introduced in the House
it may be passed by the House in the
House and the bill is not to be read
the bill is not to be read in the House.

2000

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2000

It seems on the evidence under the
same circumstances as a judge at law,
the same law, Lawrence, Lawrence, Lawrence, Lawrence, Lawrence,
June 22. Fall 22. Fall 22. Fall 22. Fall 22. Fall 22.
v. '04. 22

The proceedings in the Lawrence case
ought to be the same as the proceedings in
the Lawrence case in Lawrence in
Chancery. 22d 23d. 11th 12. 4th 23d
22d 23d. Raym 405.

The evidence of these cases as conclusions
in the judge's court of law. Their testimony
may be found to be found in. 22d 23d
11th 12. Raym 405.

The proceedings of these cases are possible
by way of 22d 23d. 11th 12. 4th 23d.
Raym 405.

Proceedings of

a judge in a foreign court is considered
 a person from evidence here of all rights
 with it purports to establish & of all facts
 with it purports to find, between the parties
 at the trial.

If the party claims the benefit of the
 judge in a foreign court, it is
 to suppose that the judge is not
 present from evidence of the fact with
 it purports to establish & the fact
 may be true but not a matter of the
 case. The case is in the court.

In the case of a foreign court it is
 the jurisdiction of the court.

But the judge of a foreign court is not
 a person with a jurisdiction in it.
 It is a matter of fact in the case of a
 judge.

Such a judge may be a judge of the
 national court of the state of New York
 or of the state of New York.
 or of the state of New York.
 or of the state of New York.

Ex 112
Sitt 20
R 301
Sitt 201

on 12th 12, the introduction of the people
of the 1st & the 2nd of the 1st
but here the 1st must be proved
like any other matter of fact.

Foreign Statutes
shall be proved here by the 1st
but a by sworn evidence.

And it is now necessary to prove a foreign
statute except in the case in which
the judge has given in which a
- in the 1st the 1st.

Foreign Statutes are in fact proved by
the testimony of a competent &
respectable person. They cannot be proved
by sworn evidence.
I think that they ought to be proved
by sworn evidence as in the 1st
Ex 112. Sitt 20. R 301. Sitt 201
Ex 112. Sitt 20. R 301. Sitt 201
Ex 112. Sitt 20. R 301. Sitt 201

The Co of each state is found in the
state by the certificate of some
proprietor or other man of the first
state known in the other state.

On this subject we have in it that
the Statutes of the several states
states and by the execution of one
state to the governor of one state
& reported with the secretary of state
exemplified by the secretary of state
is evidence of the Statute Law of the
other state.

Ex. 100
R. 100
100
Ex. 100

The court & the jury in
it is admitted even without the
their jurisdiction in evidence of
the fact that they found the
- of the right and they determine
their evidence and records that it
act under law which are a part of
our code

Page 71

If there is a finding of a defendant state
a fact on which they founded their
verdict that finding is conclusive of
the fact found the rest of the evidence
facts stated in evidence
In such a case condemning a case
the state that the property belongs to
C. B. de Spain & therefore is not neutral
nor the contention is conclusive that
the property is not neutral the rest
that the property belonged to C. B.

Again the contention of such a case
conclusive the contention for the
contention is stated Page 413. Rule
70

If however it appears from the nature
of the estate it was for some use in
the law of inheritance but in some
instances municipal regulation the
nature is such that it is not of the
essence of itself

Ind 1415
Ind 1416
Ind 1417
Ind 1418
Ind 1419
Ind 1420

But such evidence will not be admitted
to show that the evidence is not
in these municipal regulations.

Again no admittance of evidence that
any effect will be made in the estate
it was required to be established according to
the law of the land.

Proceedings in a court of equity are being
by representing under the seal of the
court all the time the law of the land.

Private law can be shown more than
private regulations. or in a court of equity
law is

Ind 1421
Ind 1422
Ind 1423

The use of a rubber bulb pump
stall through out the world. They are
established by the use of rubber
Pumps 14 in. x 10 in. x 10 in.

Many copies of various notices in the book of
the 1st. the original of each of them are in the
library of the 1st. with the other papers to
be kept in a state, in the library.
Some other holds of notes &c. of information
which are in the book.
And a few copies are the proper
proof of these entries.

then there are some facts of which
the published version the version 500456
of government is good evidence. Bull 1-2.
Lambert was he may be they heard 500474.
to that the we have it much together.

to a proclamation by Government.

The books of a person are evidence to 500475
show the time of his discharge from 500476
miser. But not to show the cause of 500477
the commitment. for the latter appears
on the 17th with a matter of record

The log book of a man of war is evidence 500478
of the time of sailing &c. 500479.

And it seems that a good evidence 500480
is evidence on facts of a public 500481
nature. to be proved in any other way 500482
previous to the fact. one of a public 500483
nature. to public evidence.

marriage - marriages taken by authority
of government are good evidence even
between individuals. Page 4, 180-21
Baker 180-190 Page R 12

in fact, much evidence is shown
of them in evidence of birth, marriage
and death.

to count the town registers are evidence
of marriage, birth.

and the certificate is a document
a magistrate can be used as
evidence in evidence of birth, death
and the, not officially.

Bill 11. Inland maps.
180-190
714.
180-190
Baker R 11
Baker 119.

The records or proceedings of the court are open to the inspection of all persons interested in them

Willsy
2/11/42
Rakey

And copies are demonstrable of right by statute all persons interested in them have the right of all public meetings

When the inspection of public meetings is refused the court will grant leave to the party to inspect & the grant is voluntary in order upon the officer who keeps the papers to permit it

Stearns
1800-1804
2/11/42
Rakey
Willsy

The books ^{and papers} of a corporation are open to be inspected by all the members of a corporation

Stearns
1800-1804
2/11/42

But an inspection cannot now be ordered in favour of a stranger even where the corporation is a party to the suit for this is to be compelling a party to furnish evidence against himself

Stearns
1800-1804

... of ... information ...
... of ... information ...
... of ... information ...
... of ... information ...
... of ... information ...

... that in a ...
... information ...
... of ...
... of ...
... of ...

... to ...
... of ...
... of ...

Evidence No 1

Private writings

When a fact is to be proved by a deed or other private document, the original instrument if in existence & within the power of the party must be produced. The original is higher evidence than a copy - the same necessity will attend copies in case of public writings too, not here except.

Black 13
Sibb 95
Eate 9017

But when the original instrument is destroyed a lost instrument evidence is admissible as a copy sworn to or proved evidence of the contents.

2 Bl 101
1 Tra 70.
526
4 Inst 515
1 Inst 193
Eate 97

So if the instrument is in possession of the adverse party & he has had due notice to produce it & does not produce it the contents may be proved.

11th 440
2 Bl 201
2 Bl 201
11th 440

But in the first place it must be proved that there was an original genuine instrument.

Black 11
11th 440
11th 440

The same rule holds of a letter if a
fact can be proved in a letter & it is
in the hands of the opposite party -
3.R. 205a. The notice is given parol evidence of
3.R. 500 the contents is admissible. And the
1st. notice may be given to the atty. as
well as to the parties.

Reb. 47. If the instrument be in the hands of
opposing a stranger he must be served with
a subpoena duces tecum - & if the
stranger puts the instrument out of his
possession parol evidence of the contents will
be recd.

Reb. 47. Where an instrument is attested by a
subscribing witness that witness must
regularly be called to prove the
5.R. 10. execution is alive & capable of
being produced as a witness.

4.R. 100. And the rule obtains as well when
the instrument is offered to prove a
collateral point & where it is offered
to prove the fact of the case.

But if there are several attesting
witnesses all need not be produced. It is not
the execution may be proved by one
of them. 1 R. 11

In the English practice the confession is taken
from the adverse party, and it is not
done not dispense with the production
if the subscribing witness the confession is not
is considered as secondary. 1 R. 11

1 R. 11
1 R. 11
1 R. 11

In some cases the rule is, that the confession is not
admitted. 1 R. 11 1 R. 11 1 R. 11

and any rule which is made in the English
rule is not a rule. It is a rule which is
not a rule. It is a rule which is not a rule.
It can be produced.

But where a party is not a party, ^{not of}
it is not an instrument is needed. It is not
a formal rule. It is not a rule. It is not
and admitted it is not a rule. It is not
the subscribing witness need not be produced
for this is considered quasi an admission.
on record.

and where the party is joined to
the instrument & agreed to
the instrument & it is the best to be
had that the instrument is the necessity
of calling a subscribing witness.

conspicuous. Where there is no subscribing witness
the other proof of the execution may be
admitted the most usual of which is the
proof of hand writing.
Ex p 6184
Lick 1.

and if the subscribing witness denies
his hand writing on the ex. of the
instrument secondary evidence is admissible
if he is a party to the instrument did not
partake to be admitted - ex p 6184
the hand writing of the obligor of
the instrument & the obligor &c. for
the evidence of the subscribing witness is
not conclusive - if it were any unprincipled
man might destroy an instrument.

where the instrument was originally not
attested but was afterwards quasi
attested i.e. if J. & R. pro forma are
put as attesting witnesses the deed may
be proved as if there were no attesting
witnesses.

It is not necessary that the witness
 have seen the obligor subscribe his
 name. If he acknowledged his signature before
 this is suff.

If the witness who subscribed the instrum.
 was interested at the time & continues
 so at the trial, secondary evidence
 is always admissible. in legal effect
 the instrument is unaffected.

If the witness who name appears in instrum.
 on the instrument subscribed his name with the intent
 of the parties.

Again if an instrument is produced in evidence
 of the parties who name appears in it, though
 what we are neither in possession of the
 original instrument nor the original instrument
 the party may be proved in the court may
 be proved by his confession.
 If a witness not infirm.

2. It is and is proof of the hand writing is
1. It is presumptive evidence of the real & delivery
every 7/74

2. It is on the other hand if the instrument was duly
1. It is attested rightly but for any superiority
1. It is since the attestation cannot be sworn, the next
1. It is best evidence is held to be the hand writing
5. It is of the witness
2. It is in a witness competent at the time of
1. It is attestation the witness interested has been
2. It is writing must be heard.

1. It is

1. It is

5. It is

3. It is

1. It is 607 Again if subscribing a deed is done so
1. It is 100 it has become blind a witness where
1. It is 300 the deed is was originally duly attested
1. It is 105 the hand writing of the witness is the
1. It is 100 not best evidence

1. It is 100

1. It is 100

1. It is 74

1. It is 100

1. It is 100

1. It is 100

1. It is 100

1. It is 100

1. It is 100

1. It is 100

1. It is 100

1. It is 100

again if the witness becomes infirm
the attestation

conviction of treason felony, crimen falsi
or perjury forgery - or of any infamous
crime as conspirator renders a person
legally infamous.

But not addition to

11
5 clld 075
Comp 3
10 clld 206
237. 403.
Rec'd 301. 312

So where a subscribing witness is out of the
jurisdiction of the Ct 2 East 250. 12 clld 007
Peake Cr 100. Esp & 258. 1 Esp R 1. Peake Reg.
11 B & P 301. 7 R 266.

And where after diligent search a known
witness cannot be found his hand writing
must be proved this is the best evidence

2 clld 007
2 East 113.
7 R 266.
2 Camp 182
1 Tunn 365.
Doug 49:43

as to what shall be deemed suff^t search vide
7 R 266. 1 B & P 360. 2 East 113. 11 John 64. 2 Camp
212.

And in all these cases where the deed
was originally well attested it is suff^t
to prove the hand writing of the witness
with that of the party. As it is the
safer mode to prove the hand writing
of both. Peake Cr 110. 11 John 64. 2 East 113. 250
1 B & P 300. 1 R 203. 7 R 266. 4 John 401.

May 17 In some of the states it has been held
1855 contrary to the last rule.

Aug 27
P. R. May 1877

1804 And if there are several attesting
witnesses, none of whom can be produced
proof of the hand writing of one of them
is sufficient.

1805 And in some cases proof of the hand
writing of the testator is presumed
independently of every requisite to the validity
of a will.

In some of the practices for some time
in both of the cases here treated of
to have the hand writing of the
testator & not of the witnesses - i.e.
where the law does not require attesting
witnesses to the validity of the instrument.
But in cases where this attestation
is necessary the hand writing of the
testator must be proved.

When there are several obligors in an instrument & the action is against one of them only & there is no subscribing obligor the other obligors have been called upon as witnesses to prove the exth

In all the cases in which it has been held that the proof of the signature of one obligor is to be understood is that this is sufficient to put in the instrument to be used to the jury. And the jury have still a right to judge on the whole.

If there are two subscribing obligors of the same kind one may be dead so they does not dispense with the production of the other if the other can be produced.

But if both are in a condition not to be examined, proof of the hand writing of one of them is sufficient as above explained.

1774
1802
21st 1808

to devise these attesting witnesses in
Peake 112 necessary to the validity of the instrument
372. and if all are dead the hand writing
Common 131 of all & of the testator must be proved
the 104.

But no subscribing witness is necessary
to the validity of any instrument whatever

Peake 212:3 In this case of devising if the hand writing
Common 131 of all the witnesses and of the testator
the 104. is proved the presumption is that
Rule 208. all the requisites of the statute are
complied with.

1811-41 And also the subscribing witnesses of a
Rule 105 devise are all living at the testator's
4 Jan 1774 if one is dead of the testator, to all the
Rule 204 witnesses. "Provided they are" of the will
Rule 240 if not contested. but in this case
Rule 372. all the other witnesses must be called
who are capable of being produced

But a c. of country will not draw a
deed to be proved unless all the articles within
capable of being produced are called His 177
even tho' some or all are beyond sea. See 178

But a c. of private in Court will draw
a deed proved upon the testimony of
one witness if the c. believe that one
tho' the others can be produced. for
if there is any dispute about the will
the decree of the c. of probate is always
appealed from.

If the hand writing of a witness cannot be
proved the confession, &c. of the person
who executed the deed may be sufficient

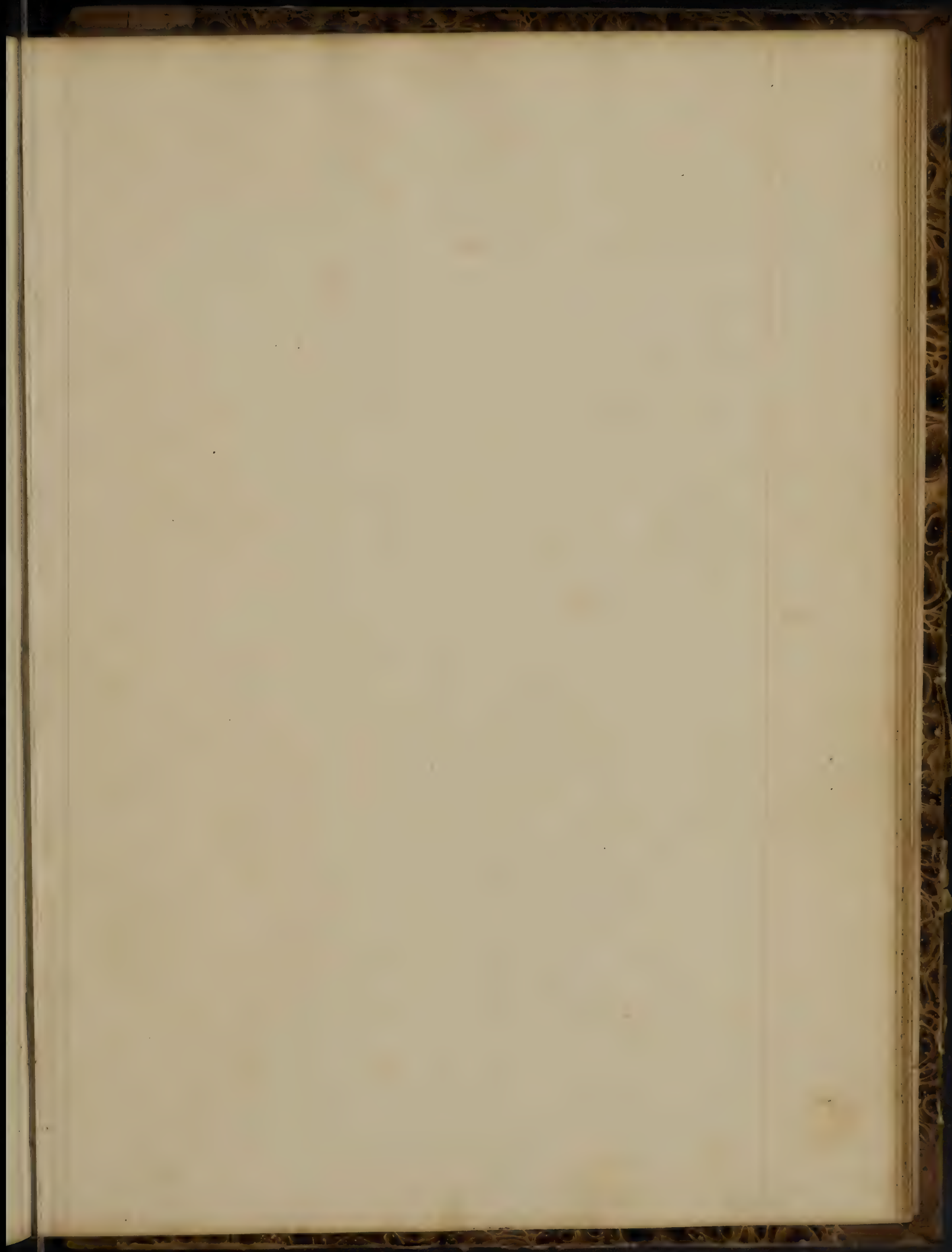
12th Apr.
4th May
11th 202

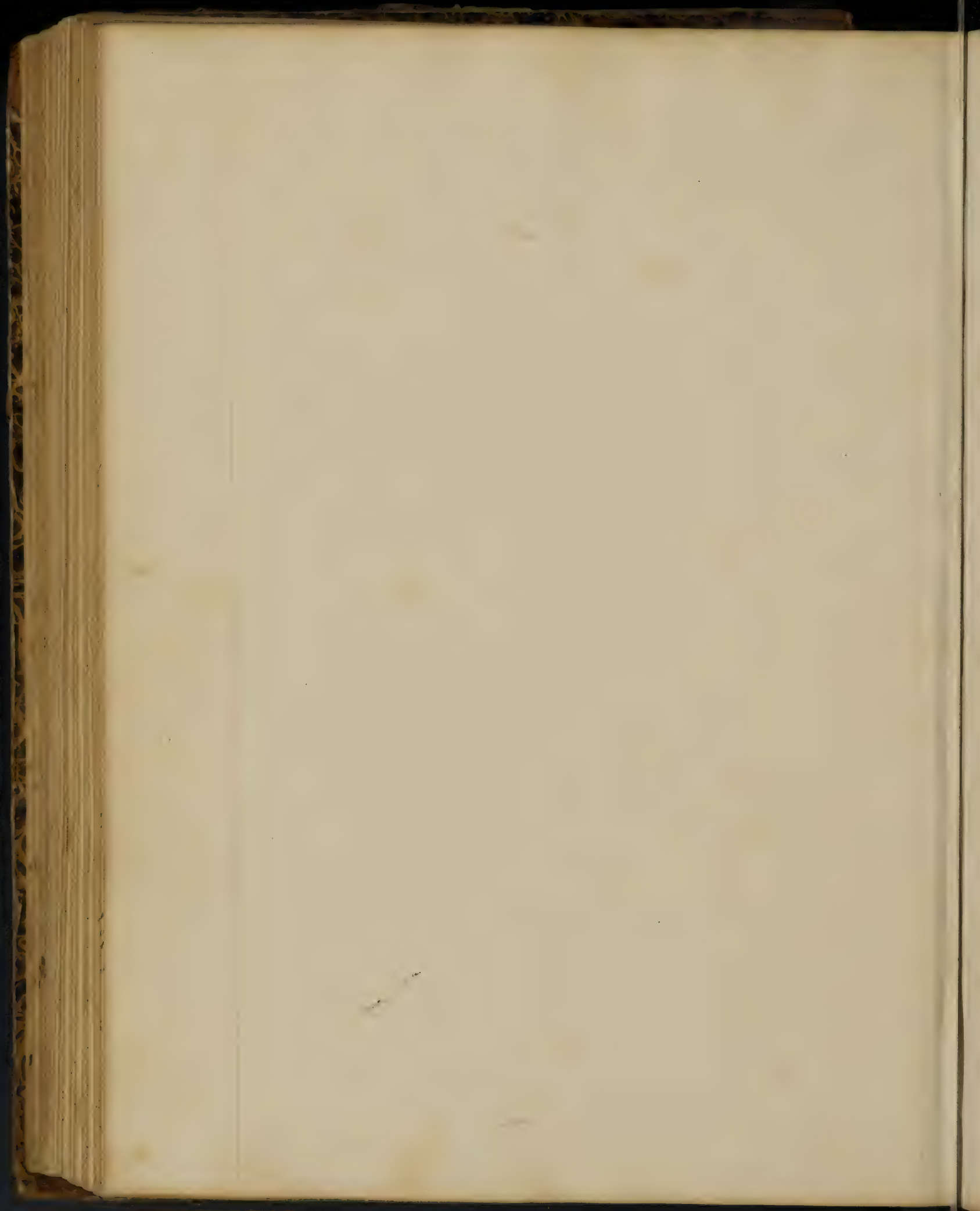
is witness testifying to one's hand writing
Baker 642 must swear to his belief that the hand
Baker 102 writing is that of the person upon
it purports to be.

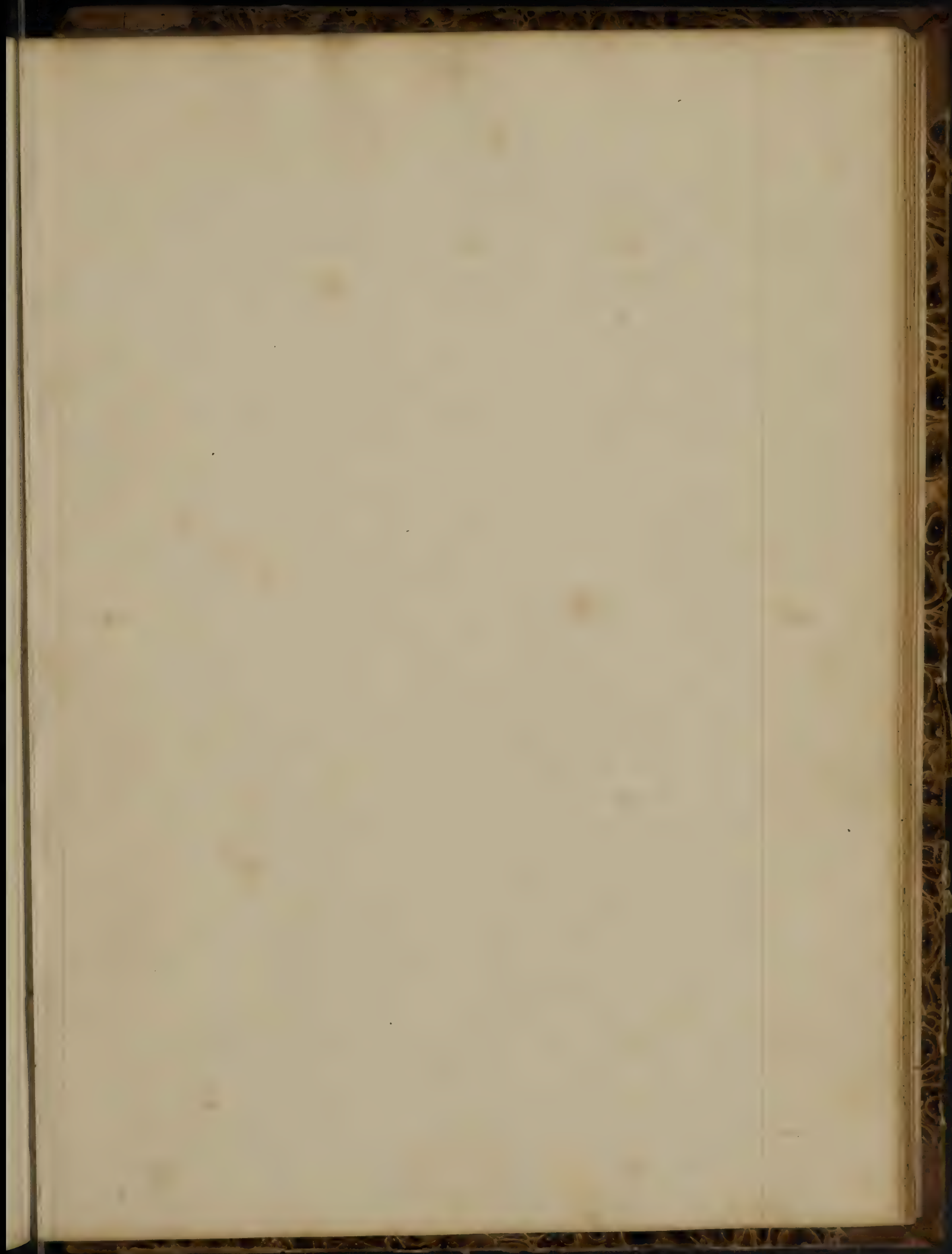
Baker 14 But this belief to be admissible must
Baker 102 be founded in a familiar acquaintance
104. 11/11/11 with the hand writing & this
4 sep 1782 acquaintance must be derived either
a. from the witness having seen the
Baker 1352 person write or from a course of
Baker 642 correspondence.

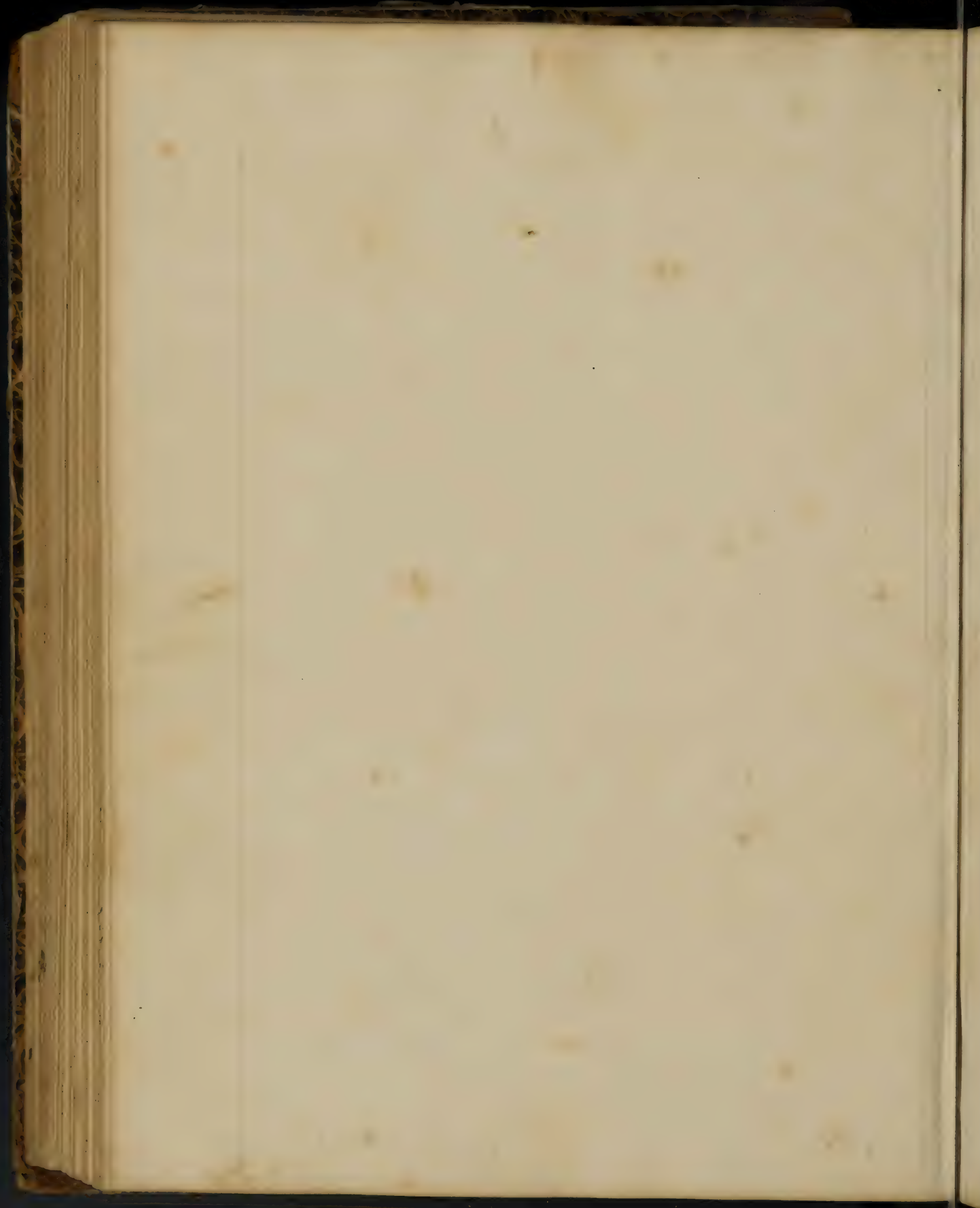
14:15 Having seen a person write his name
102 Baker 102 having the rule for the purpose of
4 sep 1782 showing his mode of writing is not sufficient
104. 11/11/11 acquaintance with the hand writing

Baker 142 a witness who testifies concerning hand
Baker 102 writing must give his opinion from the
writing merely & not from extrinsic
circumstances









Evidence (187)

By comparison of hands is meant just a comparison made by the jury between the writing taken in question & the writing which is admitted to be & express the hand writing of the party. Secondly a comparison of the same kind made by a witness.

The opinion founded on such comparison is now & has been certainly no evidence in any case except a Baron's still. This kind of evidence is certainly
 be very dangerous.

Bull 236
 4 B & C 358.
 15 B & C 35-40.
 16 B & C 35-40.
 17 B & C 35-40.
 27 B & C 35-40.
 12 B & C 35-40.
 25 B & C 35-40.

But our courts have admitted evidence of this sort from persons skilled professionally in such matters. Ex. 1000. Indeed, the courts formerly allowed comparison of hands in its full extent but it is true that this is not now law. So in Ex. 1000.

4 B & C 358.
 Root 107.
 10 B & C 358.

And some have argued that in this country as juries are intelligent men comparison of hands sh^d be allowed but no reliance can be placed on an opinion founded on a comparison in any case except that of a person professionally skilled in such comparisons.

And some have argued that in this country as juries are intelligent men comparison of hands sh^d be allowed but no reliance can be placed on an opinion founded on a comparison in any case except that of a person professionally skilled in such comparisons.

And in fact when from the antiquity of
the writing, personal knowledge of the
hand writing was lost it allowed a
witness to testify from a comparison of the
hand in question with entries made in
a parish register by the person whose hand was
in dispute - if necessary.

And it seems that a person professionally
skilled in detecting forgery may testify
that the hand is a forged one

Peak 1056

app 4112

There are cases in which written documents
may go to the jury until any proof of the
authenticity, as

20R43 When a deed is in the hands of the
opposite party & he has notice to produce
it & does produce it when the party
producing the deed is party to the
deed produced
1Pr 346-8

1East 541. Seem if the party producing the deed is
not a party to it.

again a deed of 30 yrs standing may
be read to the jury with proof of the
exn provided Reception of the subject Bull 55
of the deed has followed the limitation 1611
in the deed & provided there is no 21st 275.
apparent cause to in the deed 21st 259.

174

21st 2532

21st 259.

21st 400.

The recital of one deed in another has
been considered as suff. evidence of the 21st 256.
exn of the recited deed as agt the Peake III
party whose deed contained the recital

This is however now regarded only as 21st 108.
secondary evidence Collet 45.

Hard 120.

Peake III.

According to the ancient practice in
Engl? if there was an erasure &c in a
deed the judges determined as a preliminary
point from the appearance of the deed 10th 104.
whether the erasure destroyed the deed &c 21st 104.

But now the deed goes to the jury
& they are to determine whether the
alteration was made before or after
the sealing.

of deed or other instrument when prior
is conclusive upon the parties to it
5 Co 61 and then proving & then cannot in
1 Co 155 give any parol evidence in
3 Wils 275 contradiction of the terms of the deed
1 Brok 92
2 BCLR 124.

15 R 703 But a latent ambiguity arising in
7 R 131 the construction of a deed & may be
1 Brok 472 explained by parol evidence
2 Court 69.
Page 112

By a latent ambiguity is meant ~~not~~
2 Ves 216 one ^{not} appearing on the face of the deed
1 P WMS 420. but one arising from something extrinsic
2 So. 55. which may in its nature be proved by
5 Co 61. parol. for such an uncertainty
1 Rikoe. is created by parol evidence & therefore
1 Co 155. may be explained by it. Now such
2 Pollock 171. evidence does not affect the construction
of the instrument but ascertains some
extrinsic fact.

If devisee's name is mistaken, as to
1 Rol 676. & the eldest son of J. D. & J. D.'s eldest son
Page 112. is named A. B. & C. parol evidence is
admissible to show which of J. D.'s sons the
devisee intended.

There is another class of cases in which
parol evidence is admissible to construe
a written instrument. It is for the purpose
of rebutting an ambiguity. *vide* Powers § 100.

This evidence is admitted merely
to instruct the conscience of the Chancellor
whether he ought to interfere or to leave
the party to his remedy at law.

A patent ambiguity cannot in itself
be explained by parol. If a patent ambiguity
is meant one arising out of the terms of the instrument.

The construction of an instrument is a mere matter of law & must be determined from the face of the instrument. *Ex* *decise* *Before* to one of the sons of A. the devise is void for uncertainty.

But in some exempt cases patent ambiguities have been explained & words not in themselves ambiguous have received a construction variant from their ordinary import. This is done by the proof of circumstantial facts, not by proof of the parol deed of the devisor.

2 Am 154
(11 24 47 44)
1. 11 50

By A devised to B his house called the
bell tavern witht expressing the estate
in legal construction B took an estate
for life - the Devisee claimed an estate
in fee simple & to show that this,
must have been the intention of
the deviser he proved that he at
the time of the devise made owned
an estate for life & that the deviser
owned only a reversion.

2 R. R. 244 Parol evidence is not admissible to
1 R. R. 244 explain a contract or any
431. & prep. agreement in writing.

311. 275

1 R. R. 249. But I think that this rule is too
249. broadly laid down - Mr. P. says they
1306-188. down as a rule of the C. C. I think
60 R. 452 it is not so. - I know law out,
1 R. R. 249/ if the case bills of exchange & bills
are governed by the law merchant &
will lay out of the case mercantile
arising under the St. of frauds.

The true rule of the Co is that writings
not under seal are of no more solemnity 72 R 354
than oral contracts &c
see vide (1 Ph 495:12)

Evidence in this work have relation to the 1 Ph 495
subject of a contract under seal or in writing & Bl 495
may make the it a binding but at all 5. 11. 15
the written instrument is not a necessary
may always be proved by parol.

To prove evidence is admissible to show 15 R 47
that the deed in writing &c has been executed by the
person to whom it purports to be

To prove evidence is admissible to show 11 W 47
a contract illegal if the could not 1 Ph 477
be done the law making such contract 3 R 474
illegal &c be vain. 1 Ph 119

So if the deed apparently is illegal parol evidence
is admissible to show that the illegal
clause which makes the instrument illegal
was inserted by mistake 11 W 47

If an ancient uses in an
Scott 572 ancient instrument uniform usage
2 R 214 is admitted to explain it but not
211. so in modern instruments -

4 R 110

2 R 111

Comp 1418

4 East 127

12 Do 559

14 Do 541

7 Do 100. (Comp 119. 2 R 449.) 100 p 237 3 Do 298

1 R 266 of common written receipt not under
100 but may be contradicted or explained
by parol

Comp 414

Chanc 145

2 R 318

11 Chanc 114

5 Do 314

11 R 117

Since a bill of lading nkh always
70116297 contains a receipt of property may
1 R 341 be contradicted

If two or more trustees acknowledge in a
deed by themselves the rec^t of the considⁿ
any one of them may show that he rec^d 4th 23
no part of the considⁿ this is perfectly
consistent with the deed in to the
and if giving validity to the deed the
receipt of one is the rec^t of all

Who are competent witnesses?
1 Burr 417. A person is s^d to be competent when
he may legally be permitted to testify
at all in the case in which he is
called competency is to be determined
by the ct

1 McCr 96. In some all persons not rendered in-
competent by some legal disqualification
are admissible witnesses.

Sill 144 If no one can be a competent witness
Pake 122 who is not com^{petent}.

Rall 193 A lunatic may in a lucid interval
Pake 122 testify to facts which occurred in a
lucid interval.
Sill 144

A temporary derangement induced
by intoxication renders the subject
if it incompetent

an infant of so tender an age is to
be incapable of understanding the nature & obligation of an oath cannot be admitted to testify
Bills 144
Peake 123
at the 2001

an infant of the age of 14 is presumed
facie competent. Co Litt 26b. Collect 144
1 Hale P.C. 103. Bills 144. Peake 123.

Under this age his competency depends
upon his apparent capacity. as far
as the objection rests on the fact of
infancy. And this is to be determined
by the judge or judges. Bills 144
Peake 123.

It has been asserted that no person
under the age of 7 can be permitted
to testify but this is not true
Bills 153 154. Foster 70. Peake 123. Collect 144.
151 154. Foster 70. Hallett 22. See 114 346
482 Collect 152

Further info. as to young to
be examined or with more examination
with each but stop in new expeditions.
all at 100 200 2 156 1 total PC 634
with 29 seed 74 140 104

29. There is not a single bird in
any important situation - not in the same
the Court's collection of 186 - 187 145 (187).

I would suppose that we have no Conf.
 1840-1856. I can not testify but see if it
 speaks to the suff^r understanding the
 24
 24th Oct.

formals held that infidelity is far
not blessing in the Christian religion
was inconsistent to the C. Bank 434
7207.

But we are glad to know except in 1844
without can be examined in the same 1845
of infidelity.

1842.
Fork 1844
Apr 2nd
1844
Apr 2nd
1844
Fork 1844

And ~~but~~ allow to belief in being
in according to their own religion.

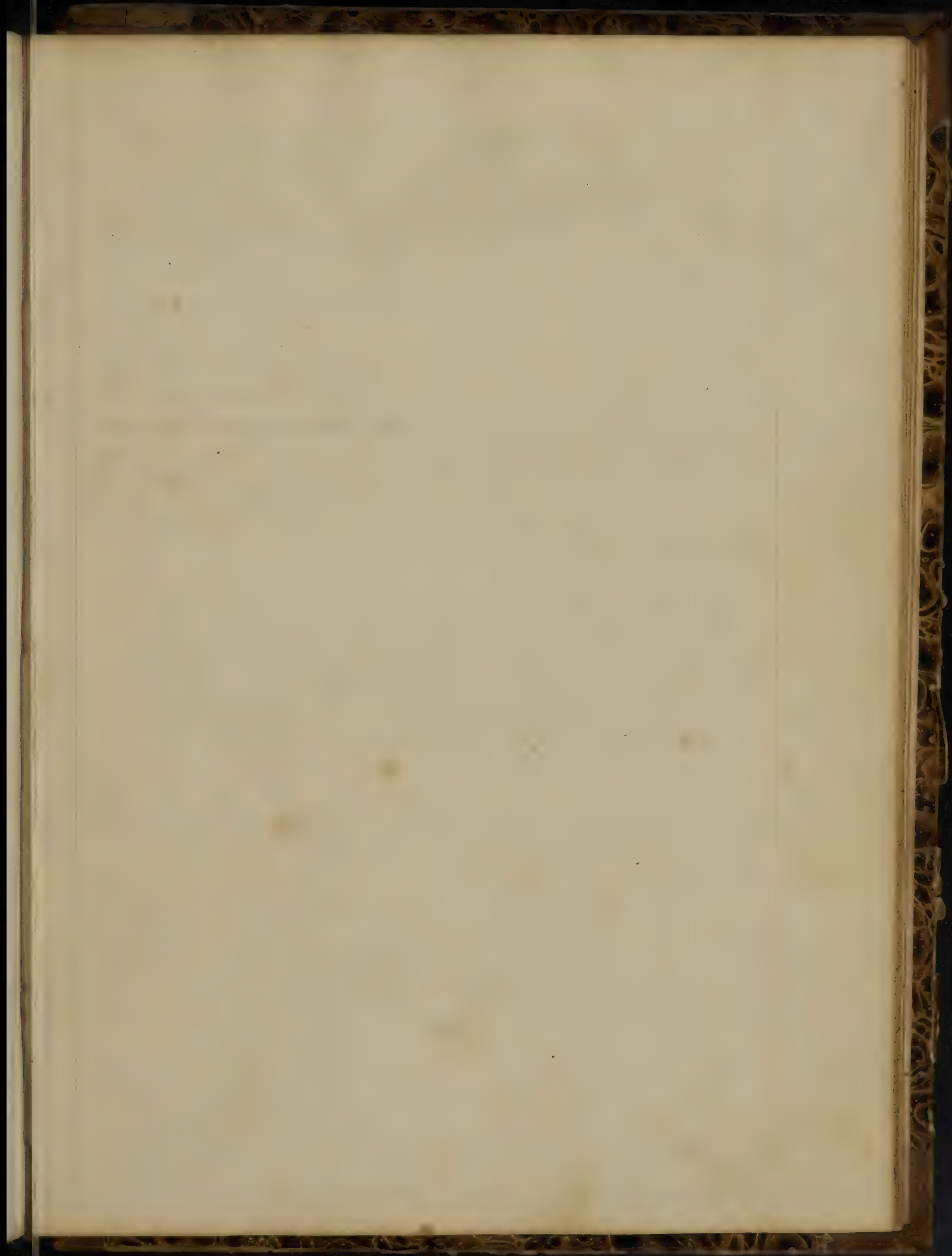
1844
1844

The question whether a person can believe in 1844
these doctrines is usually decided by 1844
examining himself not under oath before
he is admitted to the oath.

But the inquiry has been made 1844
in the case examination but the 1844
this incident.

But it has admitted part of the
previous decⁿ of a return out of Ct.
4 Day 51. But this mode appears very
questionable. The practice still continues.

21011 403:4 A return confession of his own interest
in another case - under oath was admitted
as proper evidence. But this differs from
the last case. and the rule
certainly is that the decⁿ of a return
out of Ct concerning his interest are
no evidence.



2. Select. Formerly the infamy of the punishment made
24 & R 277 the party punished infamous as well as & lumber
14 & A 4200 such is not now the law at present the
nature of the offence & not of the punishment
24 & A 4200 determines the infamy
2 W. 6 11

2 W. L. 18

Salisbury 1.4.1898. 2.4.1898.

Feb 14 01 Hence the conviction of an in among

Mar 426 Offence as Rumatig. conspiracy &c destroys

1. W. A. 207. the party's combating the the punishment
is nothing but a form

The correction never renders a man inferior,
tho the punishment is escaped by any
means.

North say But when legal infamy is merely a consequence
to Ray's 257. of punishment a pardon from the executive
U.S. 213. restores the competency

Exp 724

L.R. 80

Feb. 12. 4

But where one is rendered incompetent
by stat & where his incompetency is 1ell & 235
by the stat made a substantive part Jalk 514
of his punishment as JB n? say of 690.
the sentence an executive pardon 3lex 426.
does not restore the competency. Peake 127:8

For here the infamy executes itself when
the sentence is pronounced & the pardon
can no more destroy the infamy than
it can revoke a whipping when it
has been executed

In this latter case however it seems that Jalk 684
a statute pardon restores the competency ^{comparatively}
of the convict on the principle of the ^{termina} 5
omnipotence of parliament - there can Peake 128.
be no clear legal principle for the
rule.

Where one is convicted of a clergyable
felony & is burnt in the hand the
competency is restored for this burning ^{comparatively}
is a statute pardon & under 19 Geo 3 Term 2
whipping & fining answer the same purpose Peake 128
for by this stat whipping & fining are Raym 380
substituted in certain cases as burning Keeling 37
is in others.

Mr Peake supposes that a felon burnt or Peake 128
whipped is not as credible as others
but the credibility is to be ascertained by quilt character.

When a person is rendered infamous
the conviction is the proof of his infamy
- not the judge. It is the verdict of
Hale 111. guilty which determines him to be infamous
Hall 242. till conviction with a judge in
Peake 44.50 perjury. It is not suff^e for verdict
Compt^d with judge is never evidence in any
term a 5. case. the verdict is the evidence
Evid a 6.

Peake 118.9

Comp 3

talk on

Sellod 75. But proof of the ex^{ta} of the judge is not
Wils, 11. necessary to render the court infamous.
Compt^d
term a 5.

8 East 77. The proof a witness' legal infamy can
Hast 304. be made in no other way than by
2 Hank 46 the record of his conviction. for legal
infamy can be created only by legal
Hall 242. conviction & this is matter of record
Compt^d
term a 5.

Collect 256

talk 653

12 Mod 584

1 Ph 206d.

Long 593.

3 Kent 424

10 Ves 242

There has been a practice to call upon
the witness under his voir dire to
answer whether he has been convicted
of any offence. 42 R 440. Peake 128.9.38.
Collect 210.3. 258. 3 East 452. This is
wrong, because no one is bound to accuse
or disgrace himself by answering questions
in a court of justice 1 Ph 206. 3 Camp 210. 518.
13 East 584.

and again the party ~~who~~^{for} whom the
witness is produced may insist that
the better evidence of the infamy is
the record of conviction —

It has been made a question whether 10 Ph 208.
a person is bound, in any case where 3 Com 1252
his answer ^{or} lay the foundation of
a civil action ag^t him, to answer —

a person legally infamous may make
an affidavit in a charge bro't ag^t
himself. Ball 461. 1011 & 1111. —

The good character, of a witness not Peake 124:5
legally infamous may be proved not Ball 296.
to exclude him but to retract from 4 Esp 102
his credit — But the evidence w^h Ph 212
the law admits for this purpose is
confined to good character. particular
facts cannot be charged on him. for
he cannot be supposed to be prepared
to meet specific charges.

Evidence of this kind can be given
Peake 11.125 only by those who are acquainted with
4 Esp 103.4 the witness' genl character. In the
1 Ph 212 English practice the question is w? you
believe this witness under oath.

But in Court the inquiry is 'what
is the witness' genl character for
truth -' & this is the only question
whh may here be put.

1 Ph 212 The party producing a witness
4 Esp 103.4 may call in the impeaching witness
Peake 112 for the reasons of his opinion.

4 Esp 50 If the witnesses to a deed or devise are
1 Ph 212 dead, & fraud in procuring the will
is charged on them, the devisee may
show that the character of the witnesses
was good.

1 Ph 212 The character of a witness for truth may
2 Esp 291 impeached by proving his previous
Peake 125. C. depositions inconsistent with the statements
51. 9. whh he gives under oath. as letters
100. 1. 206 deposit Com. &c.
100. 1. 208

But the party producing a witness is
never allowed to impeach directly his
genl character — the law will not be Bull 297
thus trifled with. But he may 2 Camp 506.
exhibit testimony contradictory to what 556.
his own witness has shown. This is 1 Br 213. 129
not indeed any impeachment of character Peake 125.
at all.

And by way of repelling the testimony
as to the character of a witness the
character of the impeaching witness 1 Br 212
may be impeached.

It is doubted in Bull 5. whether in Gill 135
answer to objections to the credit of 1 Callod 282
a witness drawn down out of Ct in 1 Br 212:3
whh the same story as was told in Bull 294
was told out of Ct and ^{being accepted} admitted.
This has always been admitted in Eng!
And I think, that the weight of ^{authority} ~~character~~
in Eng? is in favour of its admission.

The credit of a witness may be impeached 2 Lai 201
by showing that he was intoxicated
at the time the events took place
concerning whh he testifies —

1011: N 183

198. 203

379

Kellogg 17

Str 420

Bull 286

Exp 4725

An accomplice or particeps criminis is a good witness for or ag^t his fellow. but where in a civil case he testifies ag^t his fellow his interest will go to his credit.

I think that in the civil action the interest is in the event the judge may be used in evidence in his favour in a subsequent action ag^t himself for the same tort. Policy probably has much to do in the formation of this rule. He may testify for his accomplice

Kellogg 18

1011: N 140

200

2 Hank 46

Peake 134

2 Hale 400

The fact that an accomplice has been promised a pardon he provided the crime is committed on his testimony goes to his credit & not to his competency

But if the promise is that he shall be pardoned if he will testify to the guilt of the other I think the rule will be otherwise.

Interest

Formed an interest in the question
under a duress in many cases, in comp - 17th 35:8
-tent -

Reake 144:5

Sulch 213

Stin 1043

17K 300

An interest in the question is that
influence whh a witness is under from
being in the same situation as the
party by whom he is offered in relation
to some fact in question

or that whh arises from the witness'
having a being exposed to some claim
whh may arise from the facts in question
tho the verdict or judgt. n? be no evidence
in his own case -

Ex action agt one underwriter & another
is called as a witness for the deft to
prove some fact whh n? be a good
defence for both. Ex that the ship
was ^{not} sea worthy. - yet the verdict or
judgt. in this case n? not be evidence
in a subseq. action agt the witness.

Ex action agt one commoner & a fellow
commoner is offered as witness for the
deft.

By again it is indicted for perjury
for swearing to a fact which B swore also
to in the same case B is a competent
witness. his interest is in the question

Again the action is brought by a master
for an injury to his servant per quod he
the servant is a good witness. the result
of the suit by the master will furnish
no evidence in a subsequent suit by the
servant against the same person.

Again two persons are injured by the
same wrongful act one is good witness
for the other the witness has indeed no
claim arising from the same fact -

Peake 144: 5. 166. 1 Ph 35: 6. 1 Stra 595. 944
1004. 3 Wils 15. 1 Stra 424. 5 John 377.

It is now settled that this species of
interest goes only to the credit & not
to the competency. 32 R 36. 42 R 20. 589
12 R 163. 302. Peake 5: 14: 6. 72 R 60. 303
4 Burr 2255. 1 H Bl 303.

Evidence (1877)

The rule now is that a witness is not incompetent on the score of interest unless he is in a situation to be immediately benefitted or injured by the event of the suit.

24 If one has agreed to indemnify me against the loss occasioned by a suit
1 Ph 36. 400. 400. 1 Day 200. 270.
3 John 83. 4 Do 302. 5 Do 256.

So in civil cases, the person injured by the crime is a competent witness for the prosecutor - he has an interest in the question but none in the event the result in the prosecution is no evidence for or against him. 1 Bur 225.

7 R 60. Ph 56. 90. 1 Camp 9. 151. 4 East 581. 1 Ell 453.

Peake says he is a competent witness unless the verdict in the crime prosecution may be given in evidence in the action by the witness - but I think that in no case is the verdict in the crime case evidence in the civil suit by the witness -

And the on indictment for robbery
in connection the person robbed is
entitled to a restitution of his goods
the party robbed is a good witness.
for he is entitled to his property if
it is his whether there is or is not
a conviction.
1st 150.
61. 116.
144.
1st 157.
yellab 30

In an indictment agt one for a cheat
the party defrauded is a competent
witness. 1st 157. 2nd 158. 2nd 159.
1st 157. Hard 358. - 1st 158. 2nd 159.

So on an indictment for perjury at all the
party agt whom the witness swears is a
competent witness to prove the oath guilty.
1st 150. 4th 2255. 4th 2256. 1st 157.
Peake R 104. Peake C 140. 1st 157. (1st 157
1104. 1st 158. Hard 331. contra but overruled)

And in this case it is immaterial
whether the judge obtained agt the
witness by the perjury is satisfied.
1st 157.
1st 157.
Peake R
1st 157

And it seems in a *pross* for perjury
under 5 Eliz the party injured is a
competent witness tho' the stat gives
half the forfeiture on conviction to the
party injured. for it is said that 1 Ph 58.
the record is no evidence for the, 2 Phil 124
party injured in an action by the 2 Rol 685
him for the half — But this reason Ball 234.
is unintelligible no action is to be 2 Raym 1224
brought.

Even persons to whom bounties are 1 Ph 56.7
given by stat for apprehending & each 290
presenting to conviction the offender 101 & 50
are good witnesses ag^t the offender. 61. 116. 144.

This is a proposed exception the witness 179
has clearly an interest in the event 152 (n).
the principle is that the very object Willes 422
of the stat giving the bounty n^d be 3 East 455
defeated unless he were a competent 4 D & 110
witness.

On an indictment for tearing a destruction
the 575.ing a note or obligation the party
Peake 147. owning the obligⁿ is a competent witness.

So on a prosⁿ for using the borrowed
is a competent witness to prove the
whole case tho' he has not yet p^d
the loan. 4 Burr 2258. Peake Ev 147: 844
-CR 50. 2 Do 490. 1 Ph 34. 40. 5 ellap 53.
(Gill 124)

Rule the same tho' the note has been
negotiated. 5 ellap 53. 1 Ph 34. (max) 39. 404

1080 In a prosecution for forgery however the person
1080 who is upon the forged instrument n^t operate if
2 East R 995 it was genuine is incompetent to prove the
208 R 27 forgery. The interest is only an interest
in the question the verdict in the crime n^t
it be no evidence in a subsequent action ag^t
or by him on the instrument or if the instrument
is satisfied he has no interest whatever.

2 East R 997 his incompetency does not extend to
1100 117 collateral facts.

141. 135:4.

142

1 Ph 89

2 East R 997 the reason assigned by some is the forfeiture
of the goods of the person convicted. but this
does not satisfy the judges so impeaching
the instrument is given for a reason.

But a release from the obligee to the obligor will restore the competency of the obligor. — *Case of 2: 300* Peake 109 n. secch 114. 1 Ph 98.

But the rule does not hold where the person offered as a witness is not be subjected to any loss by the fact that the instrument is genuine. — *Ex Cashier*. Peake 109 secch 350. Bull 259. 2 East 72 1000

So when a person whose name had been forged to a receipt had recovered of the person the money who the receipt was made by Bull 289 Peake 109

But where the person in whose name an receipt instrument is forged is in any way affected by the instrument he is not competent whether indeed is any person interested in the question a good witness to prove a forgery. *Ex-Ex* in one will back 172 to show that another is forged. — *See notes*, 1 Ph 90. in a second will.

vide *Ban* 2254 Ph Ev 90. (24)

This rule has been exploded in Court in *all* in *Lenn* & *Somb* in New York. — 1 Ph 91 n. 1 *all* 7. 3 *all* 82. 1 *Dal* 110. 2 *Dal* 239. 2 *all* 90 n. 4 *all* 190. 362: 3.

But a person interested in the suit of
Roh 144:6 the suit in which he is offered is in
164 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000

37R 36

4 Ann 128

2255

27R 496

An interest in the suit is an immedi-
ate or certain benefit or disadvantage
to accrue to the witness from the
event of the suit in which he is offered

It is not necessary that the interest should be
immediate or certain, but it must be a benefit or
disadvantage to accrue to the witness from the
event of the suit in which he is offered

106:7 if there be no acquittal any direct benefit
4. R 20 a minority from a decision in favor
300 32 of the party by whom he is offered
400 302

800 157

2 Ann 128

10 Ann 129

The question whether a witness is or is
not interested in the event can in
36. 308 genl be determined by the answer
77R 62 to this question viz whether the record
4 East 58 of the suit in which he is offered will
572 be evidence for or against him in any
20R 446 subseqt suit.

1 Day 269

1 R 434 49:50

It has been said that this is not a
a decisive criterion in all cases. but
there are cases in which there is a
clear interest in the event when the
record cannot ever be used in evidence
as for the party offered as witness
side post - But he is on side, it is
an universal criterion if the record
will be evidence for or against him then
universally he is interested in the
event. but this is not true in
converse.

If then on a recovery by the party who
offers a witness the record of that
recovery is offered in a suit
by the witness for the witness is
interested in the event or if a recovery
by the adverse party, can ever be offered
against him he has an interest in the
event -

In a suit by A claiming a right
of common by prescription B claiming a right of
common by the same custom is not
a competent witness, for this being
a public right, the verdict fact
is evidence for B.

But if the question had related to
a private right of common claimed by
et. secy.

1. 44
2. 53
3. 53

Is a person liable to costs on either side is incompetent to testify on that side for here the record is the evidence in an action for the costs.

1026. Where an infant brings a suit by guardian a next friend the guardian cannot testify for the witness infant. for he is liable in the first instance to costs

11th 130

14 Cast 565

5 Cast 101

11th 575 Rule the same as to any person who has indemnified the Plf as to costs he cannot testify for the Plf.

11th 404

11th 57

11th

Is any one who has given security for the Plf for the payment of costs.

11th 127 On the same principle any person who is to receive the assets or any part of the assets of the suit is incompetent

11th 40

15th 104 Is the Def's bail cannot testify on his side or if the Def is objected the bail become immediately liable to pay the cost of the recovery. Old bail may be made competent by the substitution of another recognizance or other persons

11th 40

11th 407

11th 407

But the surety in an adm.ⁿ bond is
a competent witness for the adm.ⁿ 15 R 163.
in an action ag^t him. Peake 171.

Hence in an action ag^t sh^{ff} for a breach
of duty by the deputy the deputy is Ray 1411
is not a competent witness. the record 146.
will be evidence in an action ag^t Stra 650.
the deputy by the sh^{ff} 3 Camp 528.
Peake 165.

And it can in this case make no
difference whether the deputy has
given security for the faithful discharge
of his duty or not.

So in an action ag^t master for the 40 R 519.
negligence &c of his servant the serv.^t 20 R 1007
is not a competent witness in the 15 C 1447
master (with a release. 1013. 1 Camp 257.
105 R 339. Peake R 53. 14 Peake 105. 6) 3 S 516.
Stra 650.
Peake R 53.

action in an action on a policy
of insurance for the warranty of the
18th 379 master. the master is not a com. p.
18th 472nd witness. (until a release to
18th 100.
Peake R84 to ship owners &c.

18th 401 So in an action by indorser a.
18th 306 acceptor, accepted for the drawer's
18th 575 accommodation, the drawer is
18th 70. not a competent witness for the
4th 464 acceptor, for if a recovery in this
4th 466 case is had the drawer is liable
for the costs of this suit -

18th 401 So if a witness for the def. is by
Peake R84 subjecting the def. to himself
4th 451 from any liability he is incompetent
2d 444
4th 451.
18th 500.

Hence a grantor who has conveyed
3d 433 land with cov. of warranty is in-
4th 373. capable to prove the grantee's title
2d 394. is essential for if the grantee is
4th 523. wronged he is liable
18th 472nd

The rule is said down more comprehensively
is if the grantor has conveyed with
cor^e of warranty, or seizin - "but I do not
not agree to the latter part of the rule
viz the seizin.

So when lessor's title is not in question the
lessor is an incompetent witness if there is an
express or implied covenant of quiet enjoyment. 4 Esp 166
12 H 470

So the vendor of a chattel is an incompetent
witness to support the title of the vendee. 10 H 515

But when there is no cor^e express or implied then
the grantor lessor & vendor are good witnesses. 12 H 170
12 H 470
2 Binn 45

And grantor by oral claim is a competent
witness to prove the title in favour of his
releasee, not claiming title under himself. 4 Call 441
2 Binn 95
100. 500.
6 Binn 500.

The inhabitants of a town or parish not
40R17 actually rated but liable to be rated as
65R157 competent witnesses in a question of
reassessing settlement.

15 East 471
Lancaster 1084
1 Ph 47.

In this state the inhabitants of towns,
parishes are competent
witnesses where the town or parish is concerned. they
is allowed from the necessity of the case

2 John 285 When a sum of money is lost for a
1 Ph 40 pt penalty which if recovered will go to
the poor of the town the inhab^s of
the town not actually rated are
competent witnesses

A party to a suit cannot regularly
testify for himself or for his co-partner.

411k 116.

Peake 149

1 Ph 57.

1 Vern 230

1 Day 106.

4 Day 388

So a party to suit tho' a mere trustee
having no beneficial interest in the
subject of it is an incompetent witness
he is liable in the first instance to
costs.

3 East 7

7 R 608.

2 Day 404

Peake R 153

Peake 149.

1 Ph 57

So Ex'r or Adm'r whether Plf or deft
can in no case testify in his own favour
tho' when Plf he is not liable to costs

1 Ph 57 (n.c.)

1 Binney 444

6 Do 16.

The presumption of interest in a
party is irrebuttable -

111 M 239

2 Vesey 442

2 Vern 699

1 Tra 34

2 East 183

The members of a corpⁿ having no individ.
ual interest in the suit are comp^t.

witnesses for the corporation. Ex corpⁿ of
a college. As members they are not

liable for costs. 3 Atk 401. Peake C. 49.

1 Ph 57. 98. Peake R 153. 8 John 462. 9 Zc 220.

7 Alls 398.

But when the members of a corporation
have an individual interest in the
11 Vent 351. subject, they are not competent witnesses
53 R 174. for the corporation. Q. the stockholders
Hob 92 of a bank.
Peake 149.

And the smallness in point of amt
of a corporator's interest makes no
difference. Buller 290. 53 R 174. 11 John 57
1 Ph 52:3. 59.

The competency of a corporator may be
collaterally restored by his ceasing to be a member
Peake 104 ex: by ^{dis}infranchisement! so by disposal of
1 P W 395. stock in case of Banks &c. so in some
Held 225 cases by a voluntary act of resignation.
1 Ph 98.
Talc 432
Common Dig
Finn. p. 30.

In court the members of a local cap^{ns}
1 Ph 5814. or societies, parishes, towns &c are com^p
witnesses in favour of the cap^{ns} in all
cases -

The members of cap^{ns} of a private nature
in our law are not competent witnesses
when the members have an interest in
the subject matter of the suit -

One deft in a suit cannot in genl
testify for his co deft. for if one is
not liable the testimony goes agt
the joint liability charged in the
debt —

But in totl if there is no evidence
agt one of the Defts on the conclusion
of the 2d evidence he may be discharged
& testify for the remaining deft

In some late cases it has been held
that the judge may in these cases exercise
a discretion but I think the only
discretion whh he can exercise is that
of determining whether any of the
evidence is relevant & on this deft

Bill 117

Bull 215

East 312

2. Hank 40

that 91.

3. 211 211

Bank 152

1. 111 204

1. 111 204

1. 111 204

275 111

But if there is any evidence agt the
deft the question must go to the
jury.

Bill 117.

Bull 205.

3. 111 25.

14. 111 119.

15. 111 223.

But in this case if the evidence agt
one is slight he may have a verdict that

It is said in trespass agt A. alledging
Pence 153 the wrong to have been committed by
1 Ph 61. A jointly with B & it appears that
Ball 216. A was concerned in the trespass.
(10 John 21)
1 Ph 62 (n)

If one whom the plf names as witness
Ball 285 is by mistake made deft the Ct on
1 Wils 441 motion will order the name of
Ph 63 this one to be struck out & then
he will be a competent witness.

Hardw. ca And in civil proceedings the atty
163. genl may strike out the name of
1 Ph 63. one.

Str 633 In an indictment agt several if one
1 Ph 62 submits & pays his fine or suffers his
punishment he is a competent witness
agt or for the others.

But in a civil suit agt several if
one suffers a default they does not
qualify him to testify. he is yet a
party. as regards damages at least
he is yet on trial.

Ph 62
Exp 155.
Bull 285.
2 Camp 333
10 John 95.

And if one of two depts on a joint
contract has obtained his discharge
under a bankrupt law he is still
incompetent - for if the other depts
are obliged to pay the whole they
can compel the bankrupt to contribute

3 Exp 25.
Ph 62 (n).

In an action on a jt contract agt
two & one suffers judgment by default
his incompetency concerning on a
distinct principle for if the action
fails as to the other party the
party defaulting is discharged.

4 Taunt 75.
1 Ph 62.

In an action agt two in trover one
suffers a default, he is s^o to be
admissible for the debt tho' not for
the Plf on the ground that he
having suffered judgment by default is liable
at all events & that he is not liable
to the costs on the trial of the other
deft. But he is liable for part of the
costs and there can be but one apportionment of damages
& his testimony may mitigate damages.

2 Camp 333.
2 Exp 553.
1 Ph 62.
Peak 152.3

8 Winn 319.
1 Day 33.

And yet if one of two debts in eject-
ment lets judgt go agt him he is
Bull 285 a competent witness for the damages
Ph 62.3. are nominal & the law does not
regard them

Str 35. But a person jointly liable with
1 Ph 364 another who is sued alone is not
Peake 155 a competent witness for the debt
170. tho he may testify for the Plf
Peake R 174.

1 Cr 103 But a release from the Debt u: restore
Peake 155. the competency of the partner.
170. 171.

In Equity one of sev: debts having no
interests may testify on either side -
3 Atk 401. Amb 393. 1 Ph 63.

Peak 167 A bankrupt is not a competent witness in
1 Ph 51. 11 an action brought by his assignees, his allowance
is increased by the increase of the property.

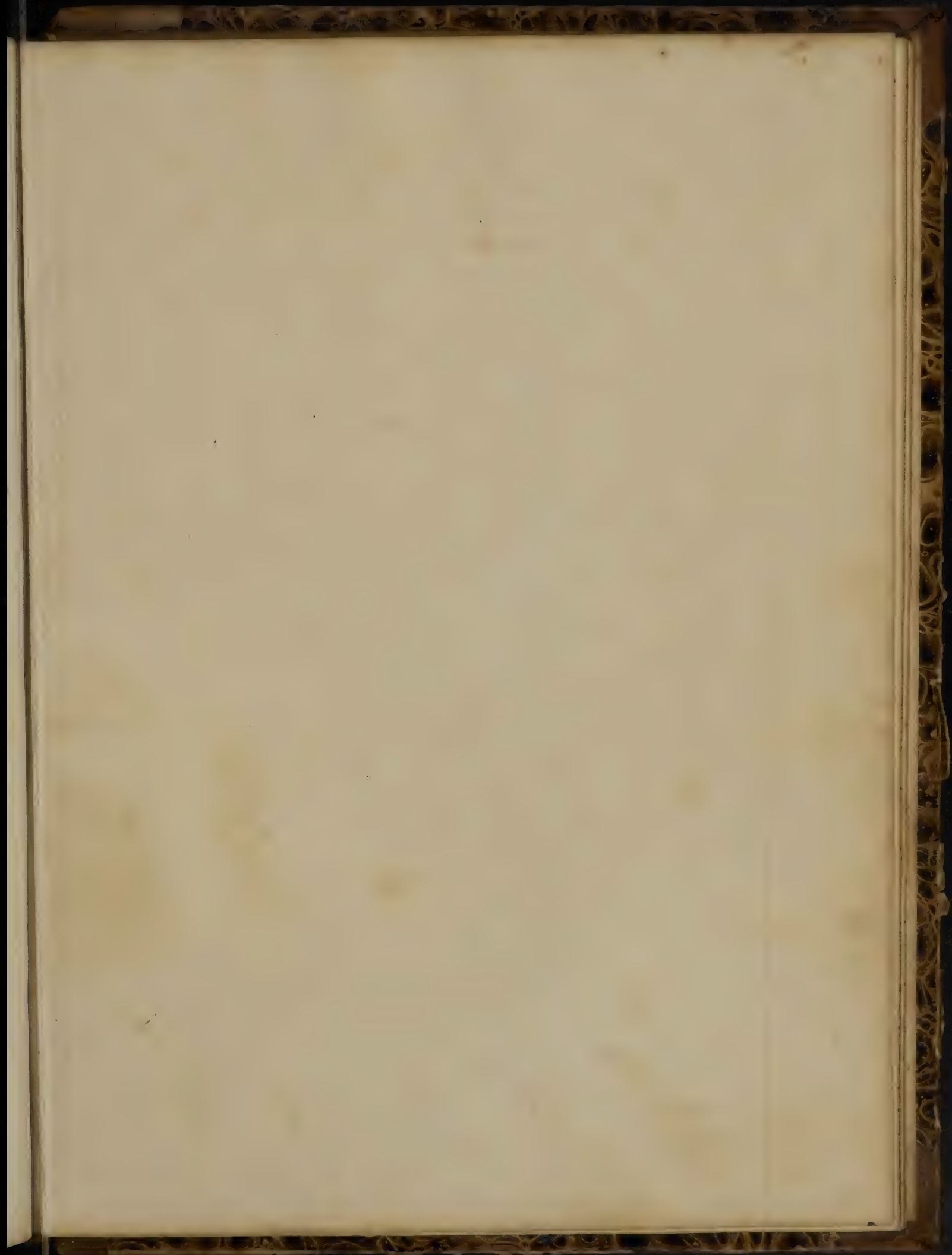
Str 507 So crs of a bankrupt are incompetent in
John 427 an action brought by the assignees. for the
Peake 167 assignees are merely the agents of the Crs &
2 Dall 20 if the assignees recover the Crs are benefited &
10 Mass 239 2 Bay 466.

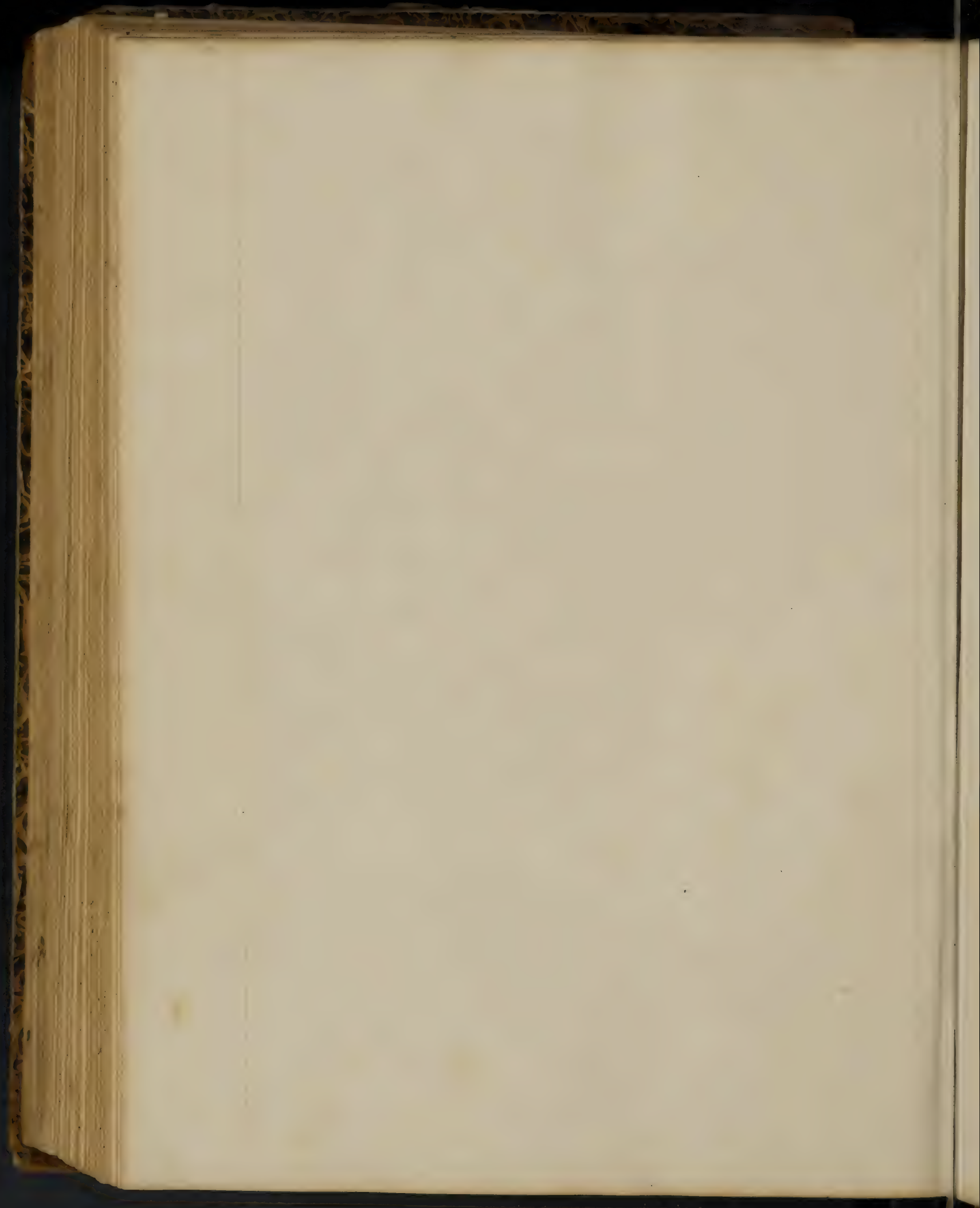
The bankrupt himself is not competent to testify
any facts in support of the commission unless
unless the commission is good he will not
be discharged from his duty. & they were Compt-
held that the certificate has been obtained. Bk 269.
He has released the money. In case
the commission is good the certificate is
void.

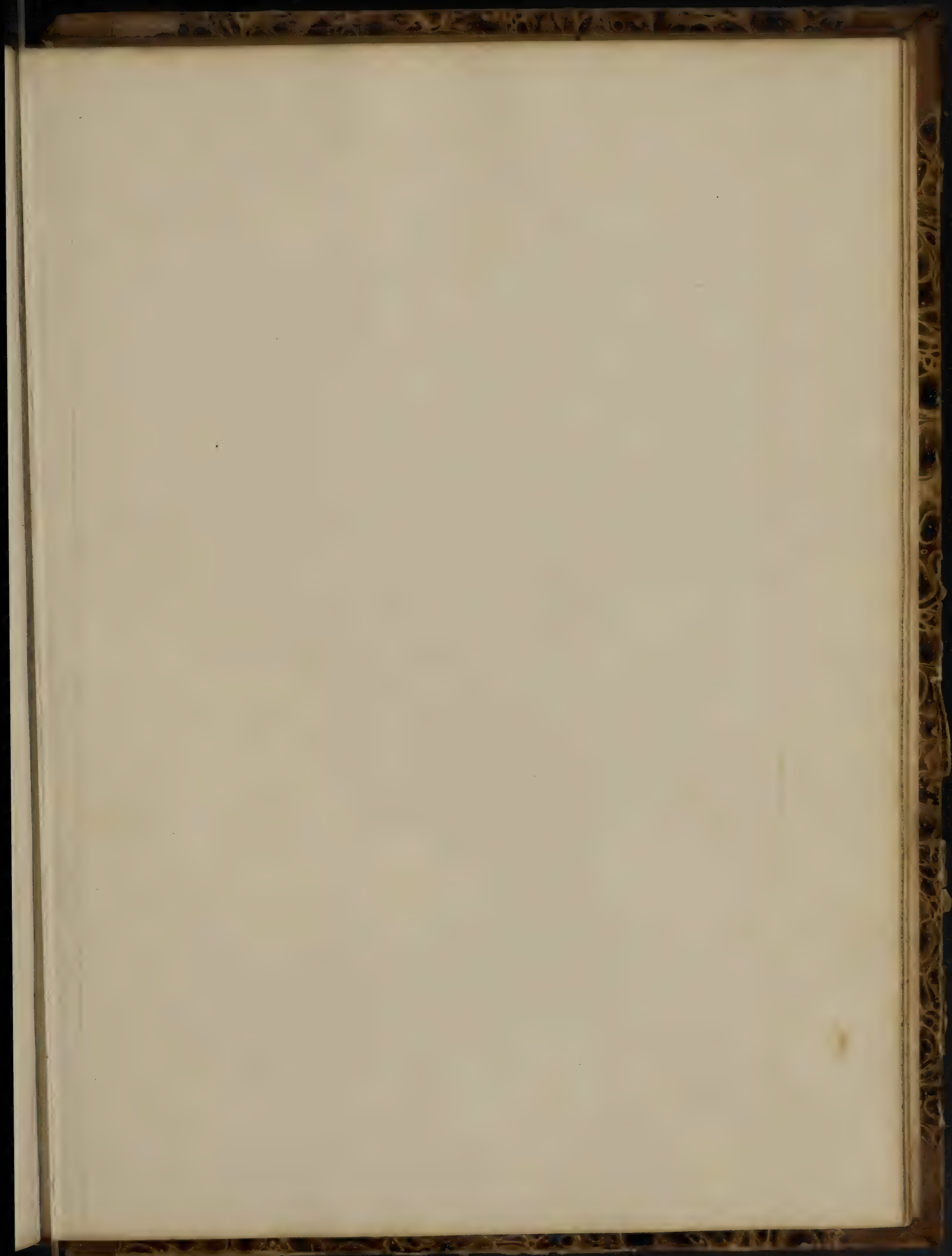
In trespass act. Bk 24 for taking his
goods in Jan 1840. B- B is not a comit. 20. R 22
witness to prove that the goods were his. Bk 4 p 15
for if they were his his ex^t debt is satisfied
but if they were not his the ex^t debt
will remain act him. One the verdict
will not be evidence for or act B in
a subsequent action relating to the prop^y

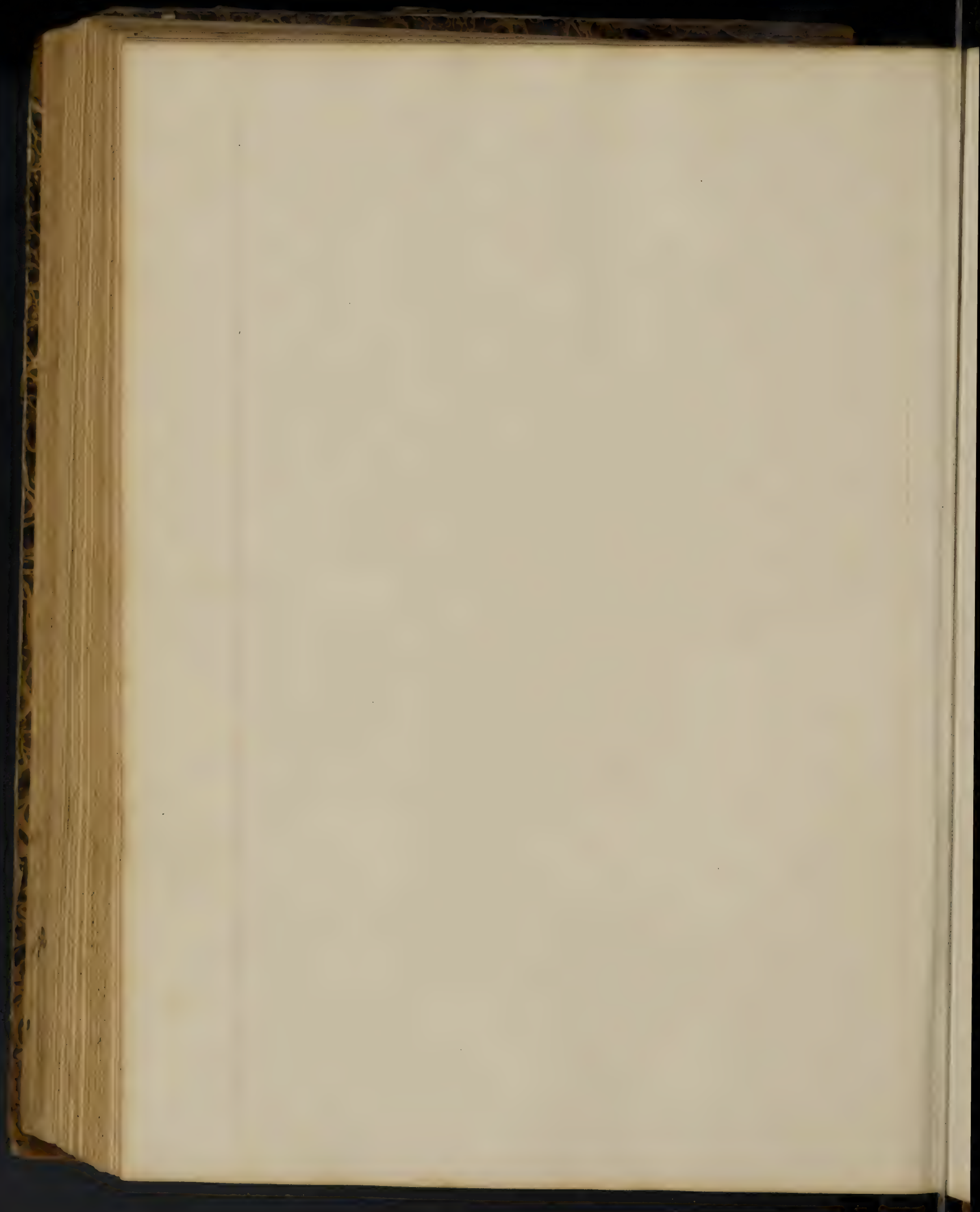
Amount 100
24 40 12
John 0275
12 John 246

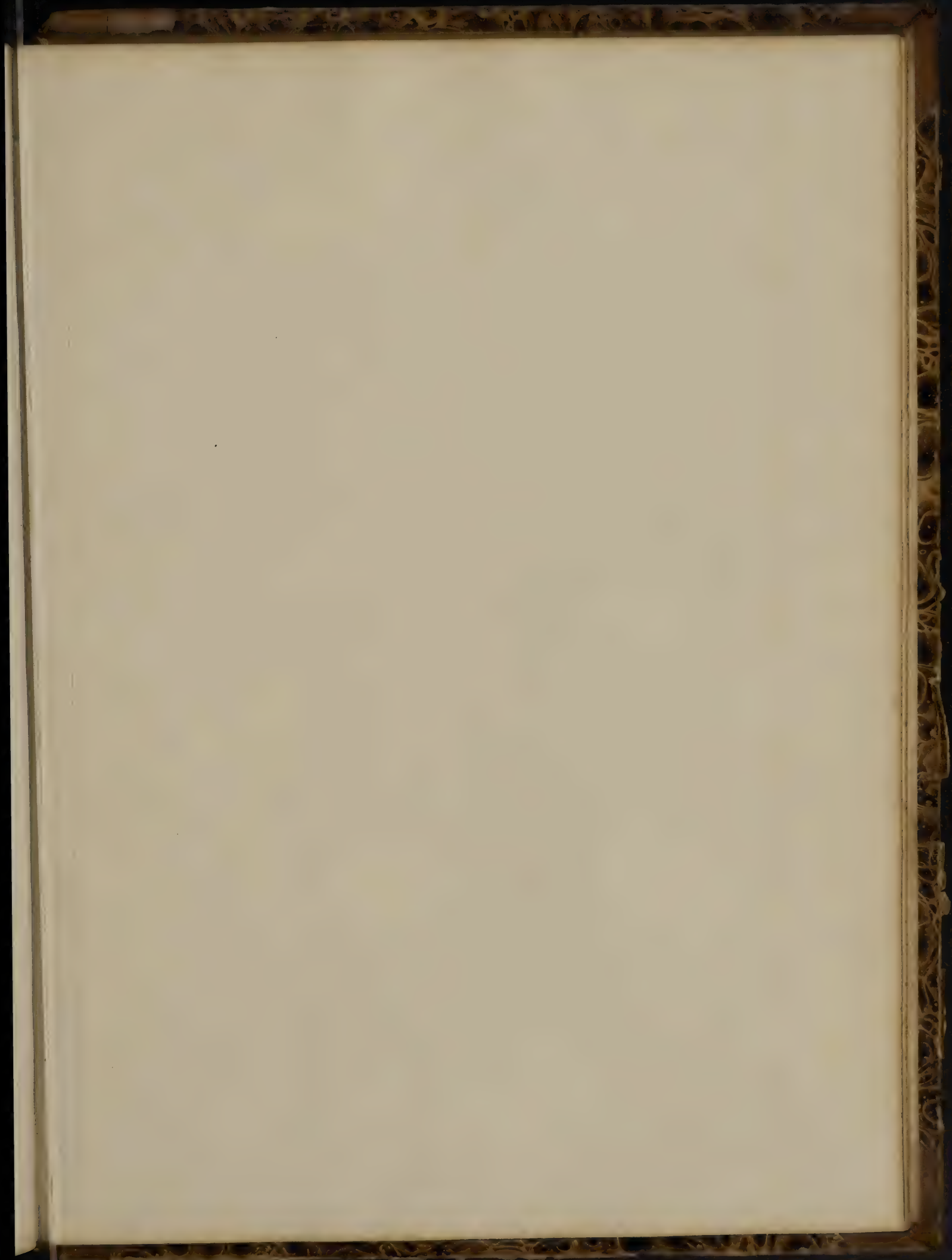
It seems to me not a complete attempt to
give the totality of the matter in question but
to give the essence of the matter. It seems to me
that this is not an interest in the matter.
But it is a rule that an interest in
the matter will exclude in such a
case as this when two persons claim
distinct subject matters under the same
common reference. — For the matter in
the first case may be given in evidence
in respect to the second derivative (the
thing is not conclusive evidence —

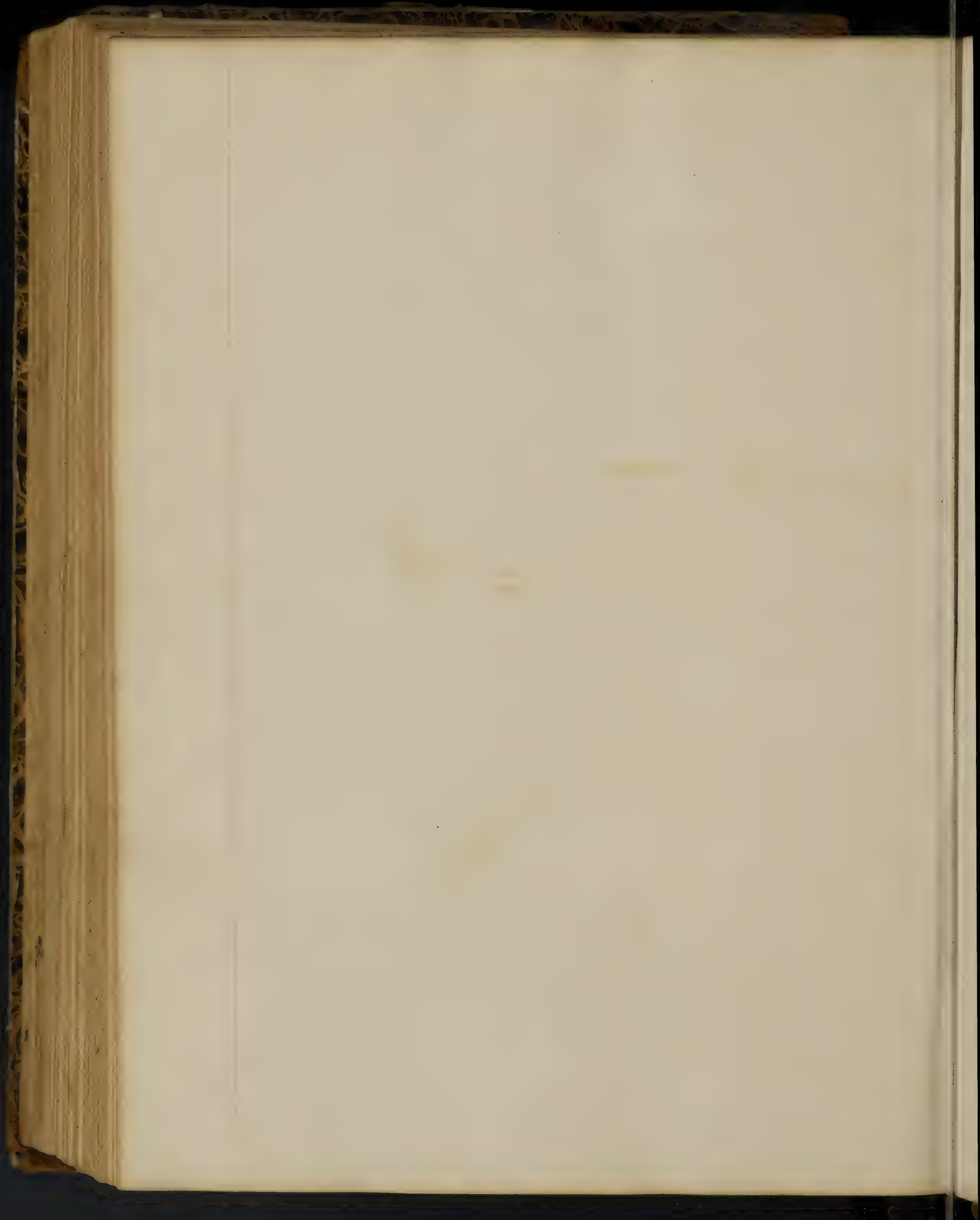


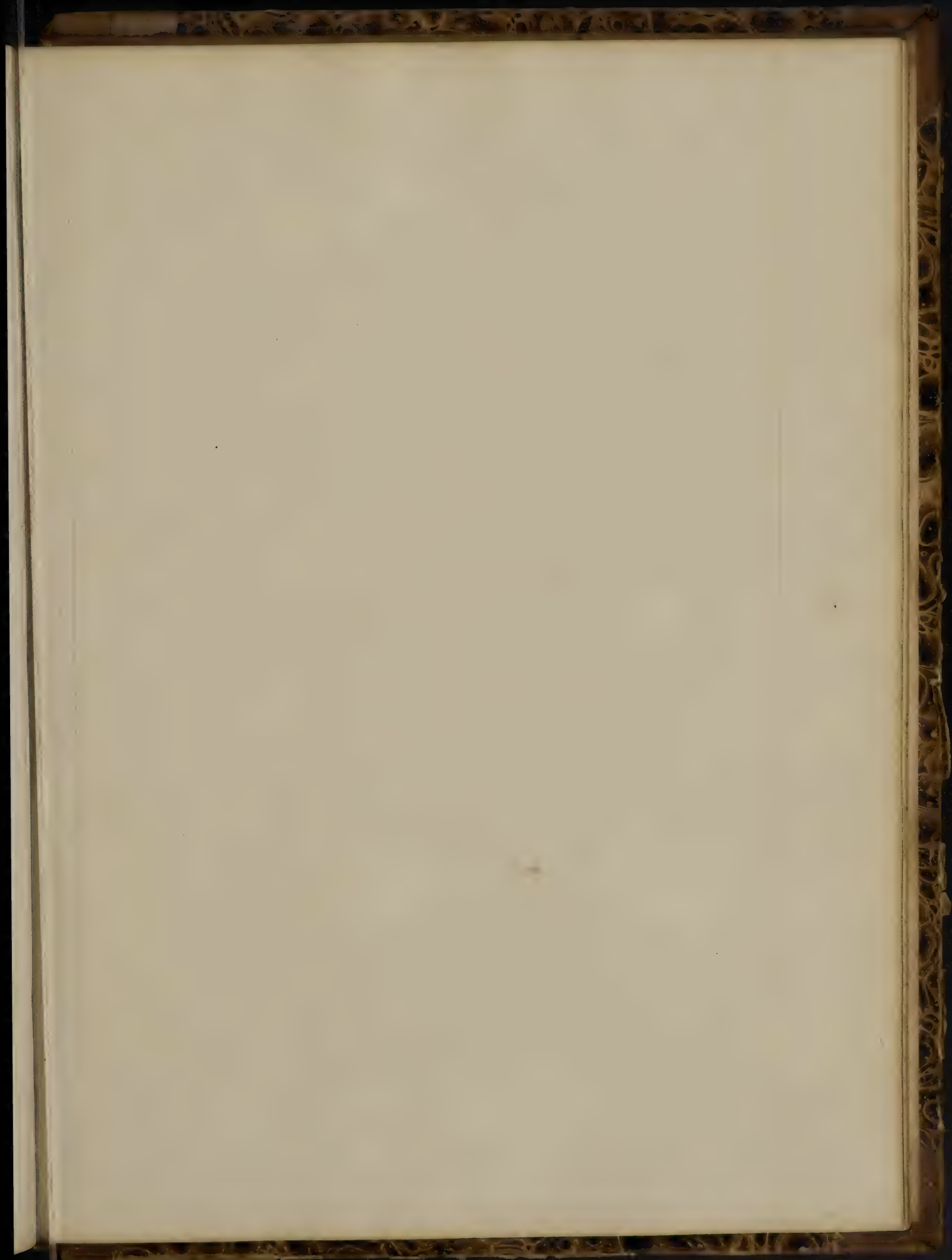


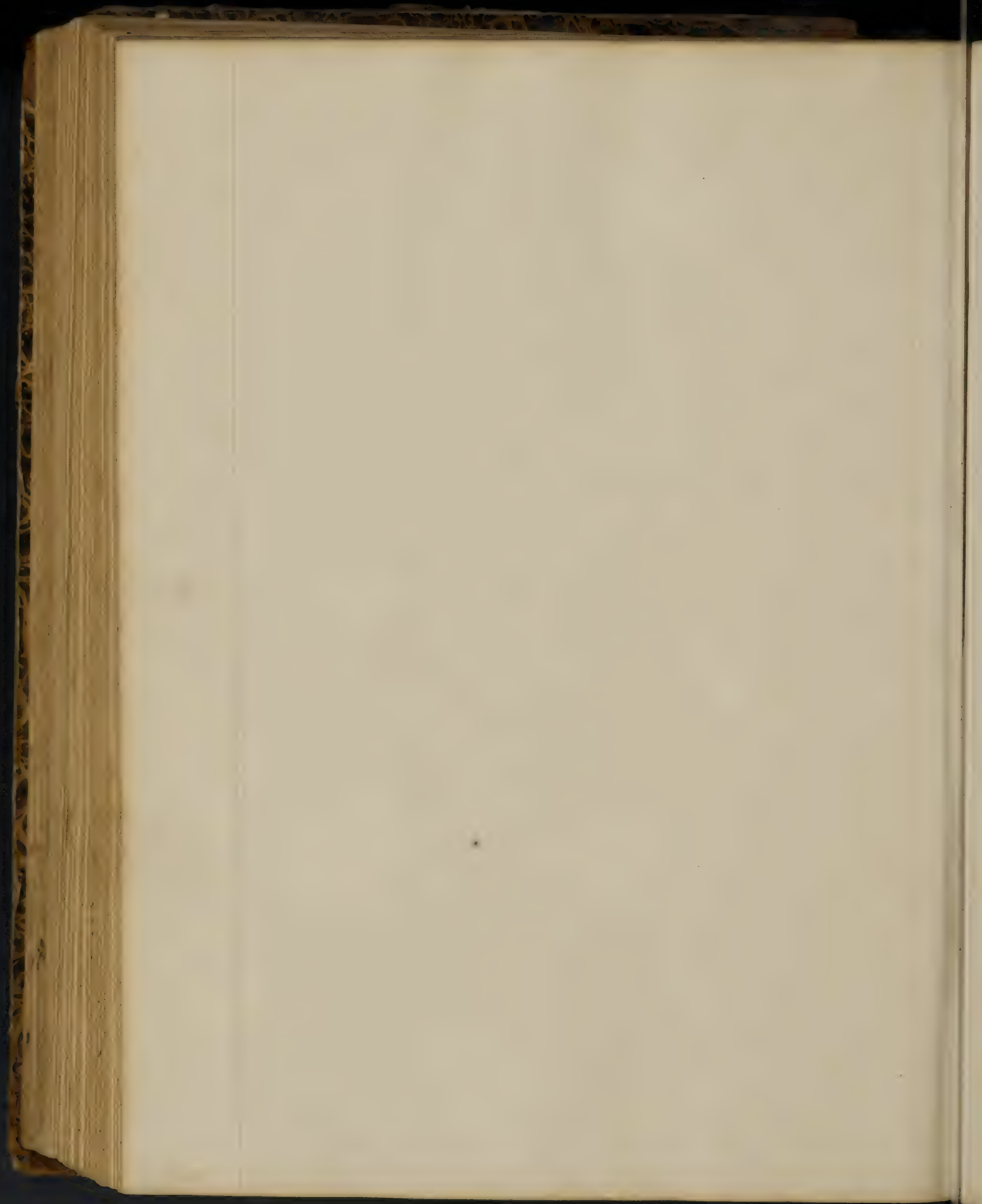


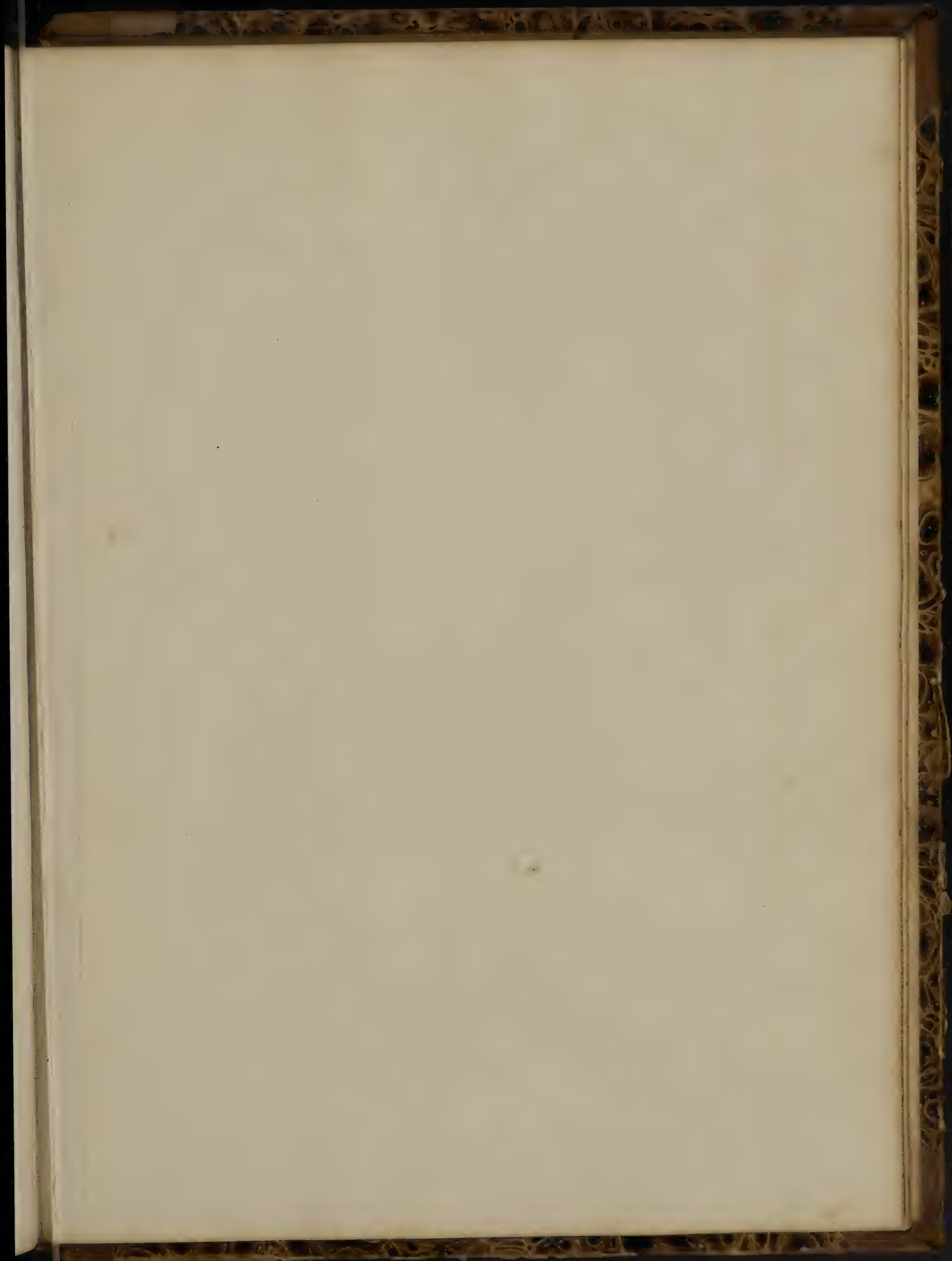


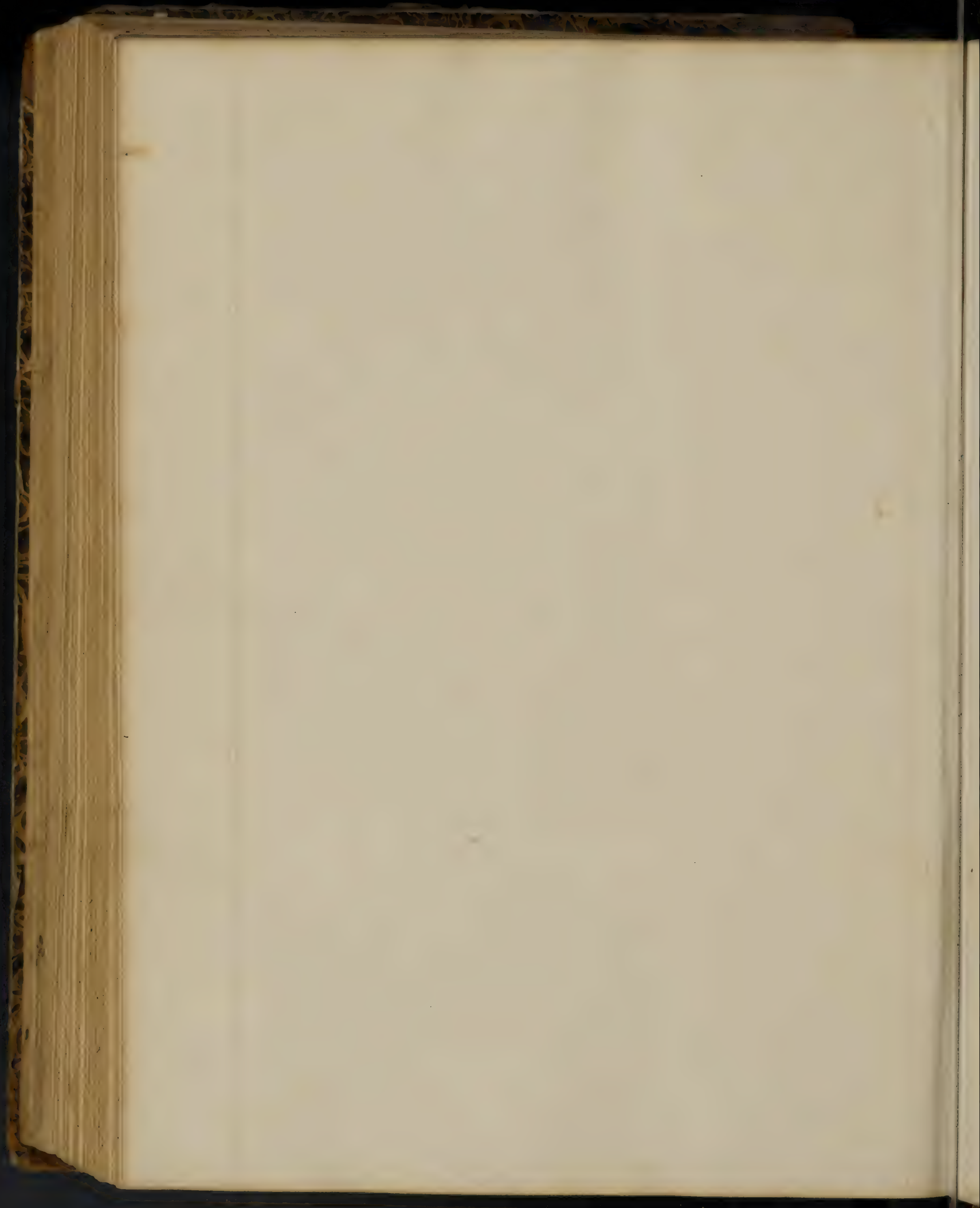


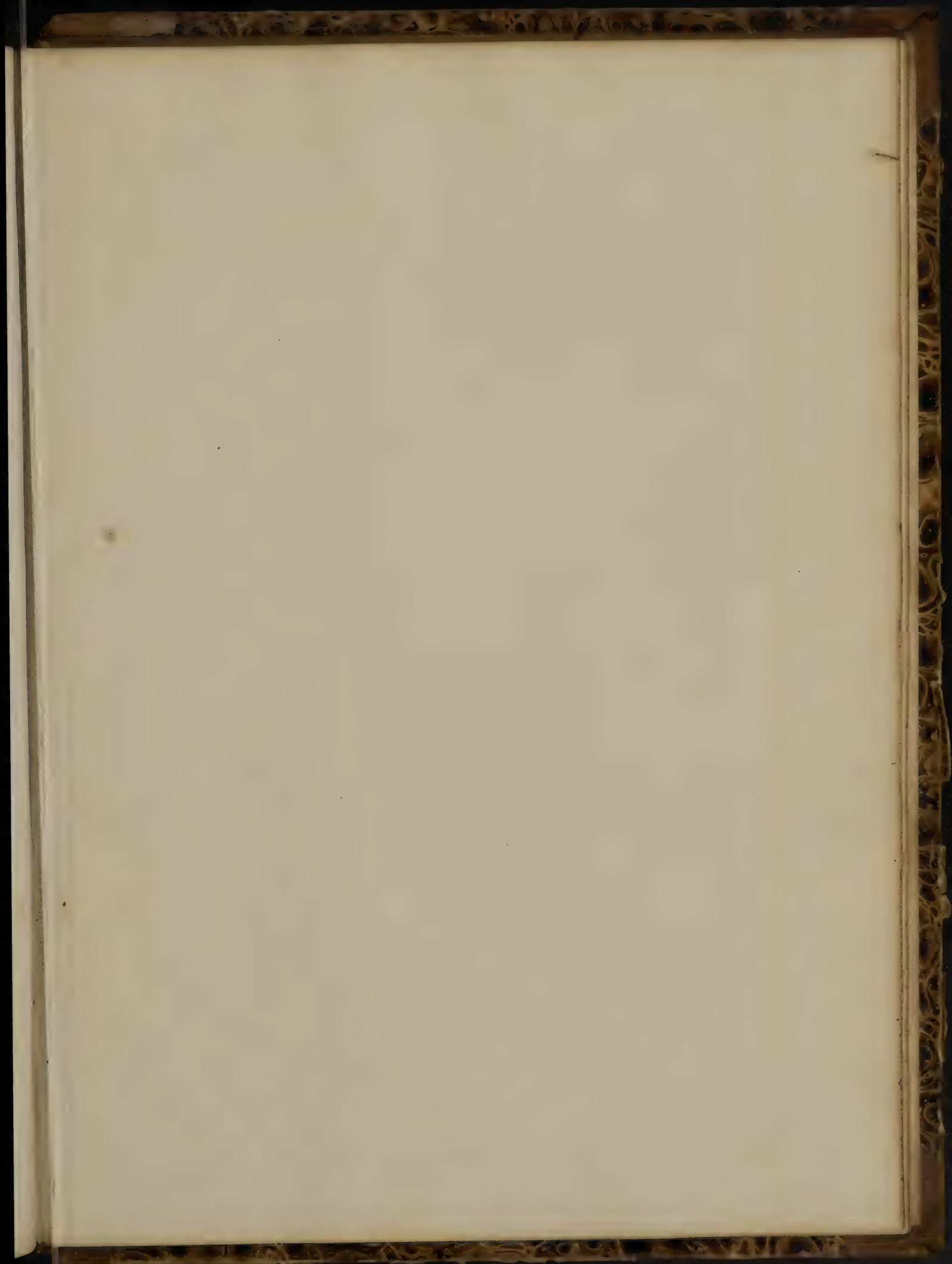


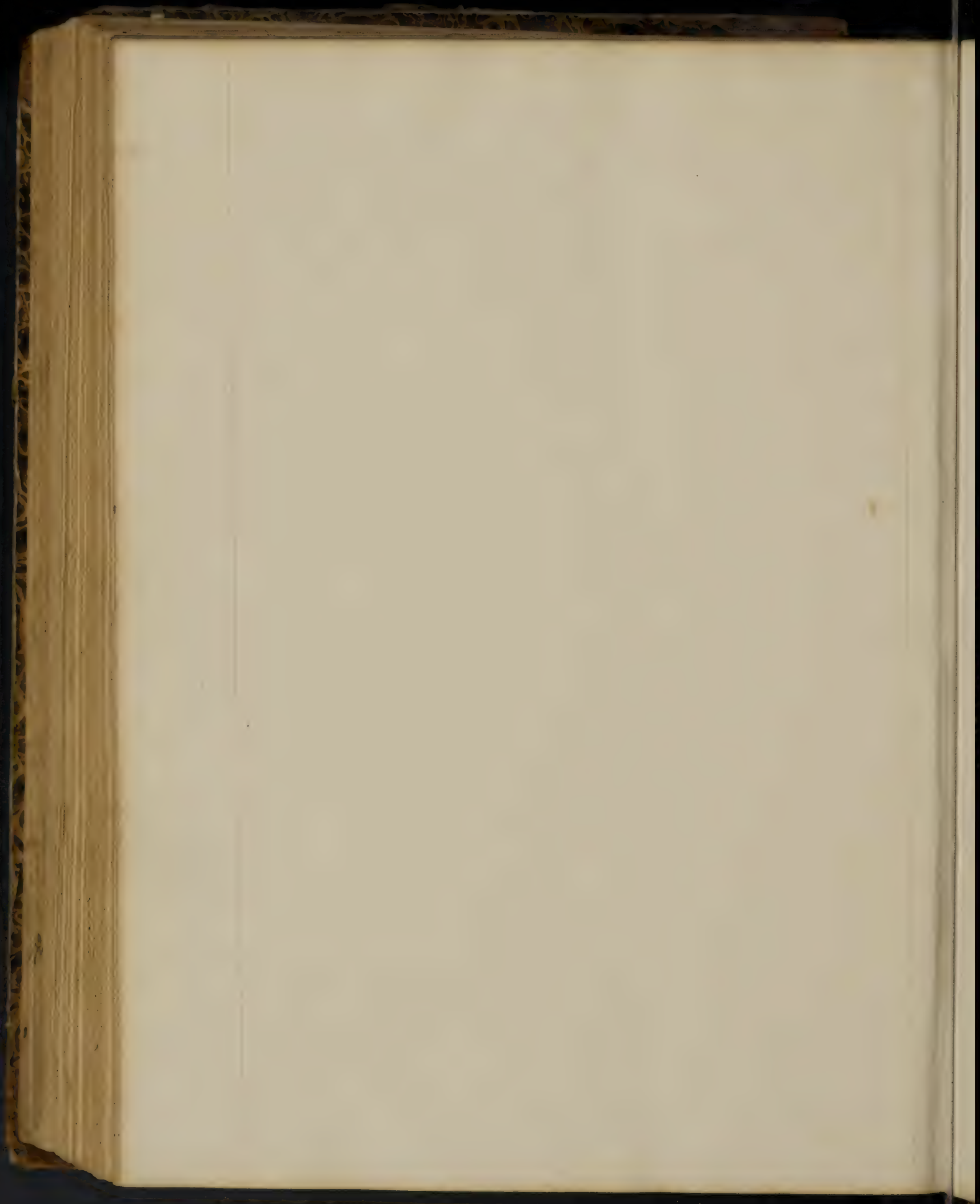


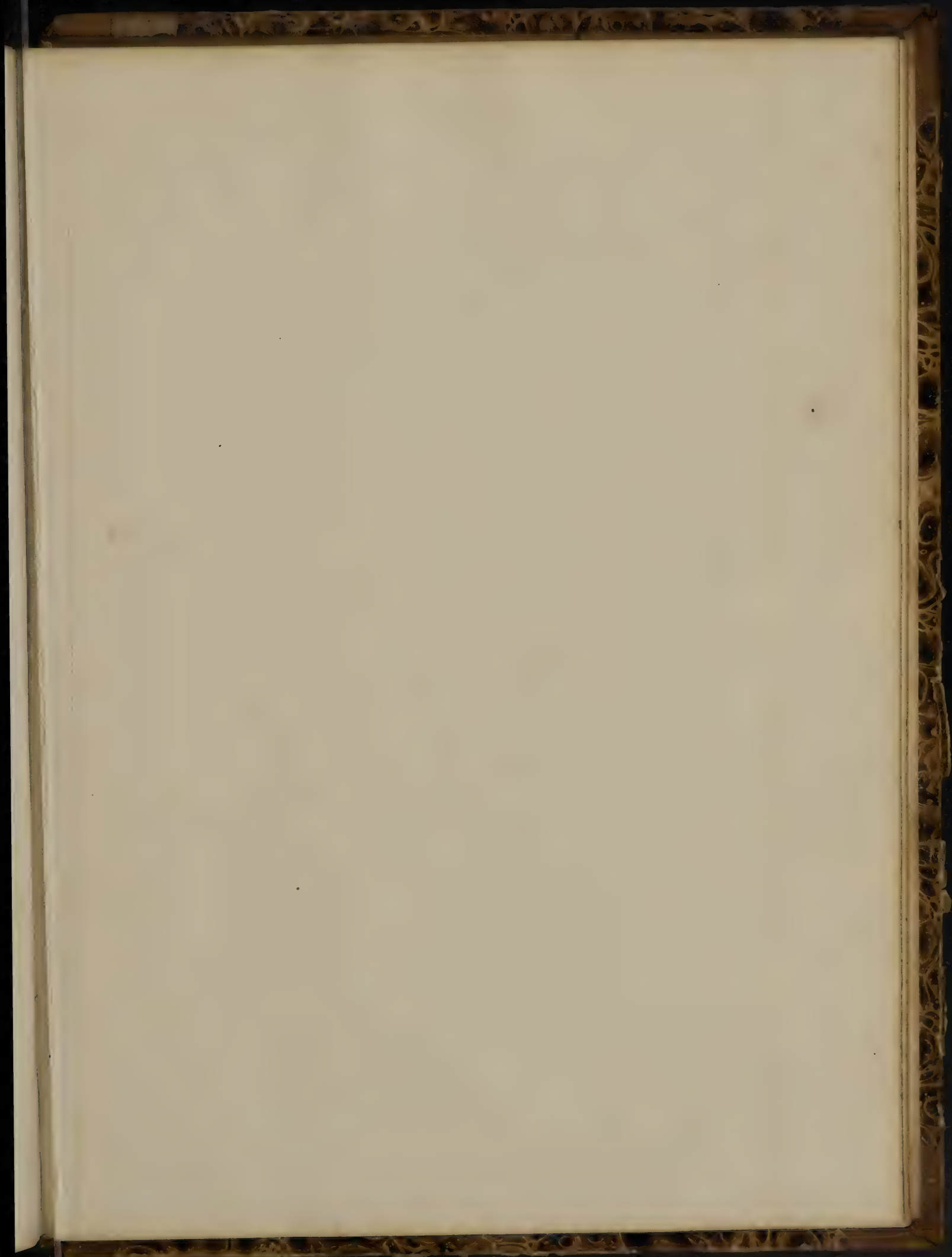


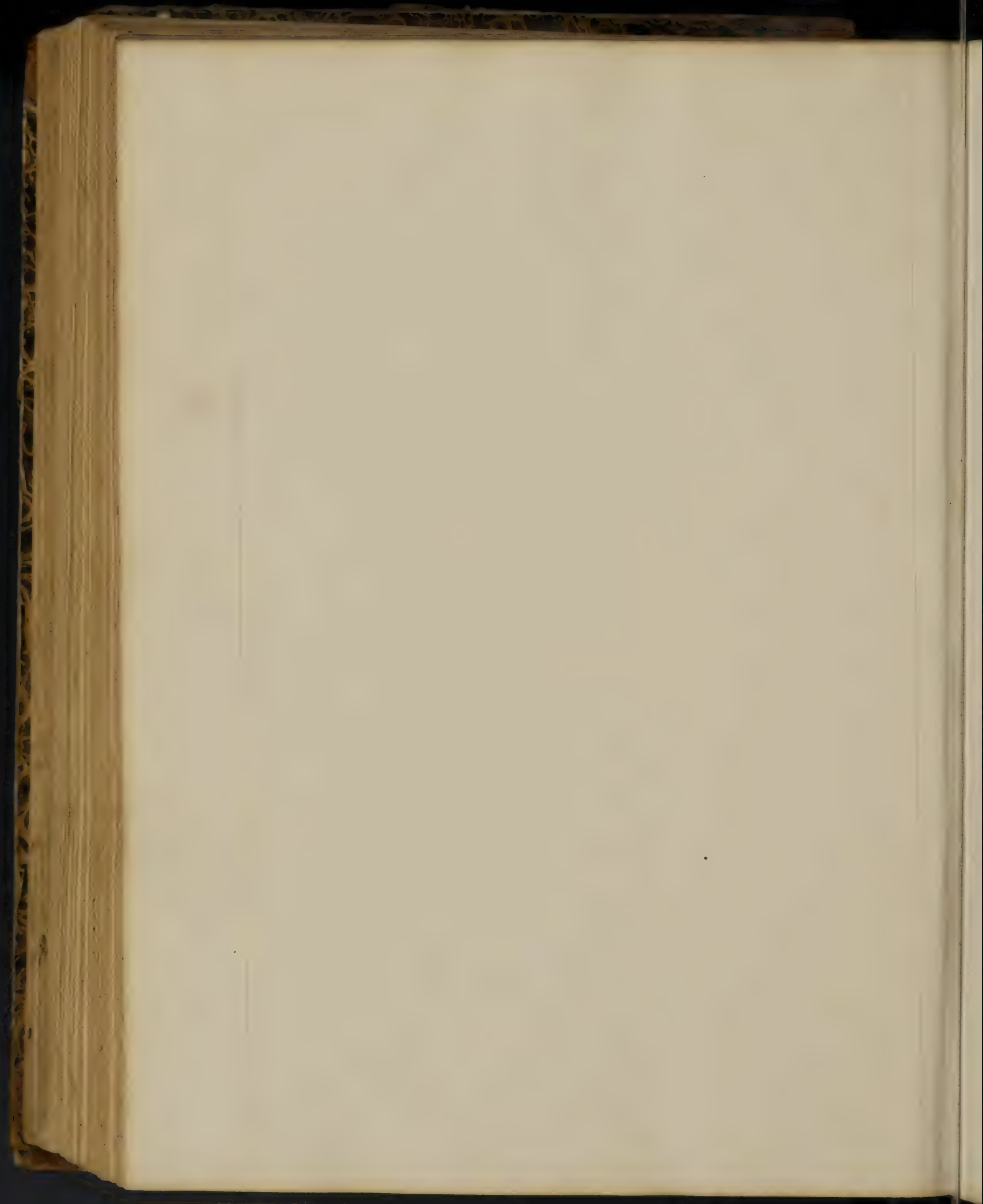


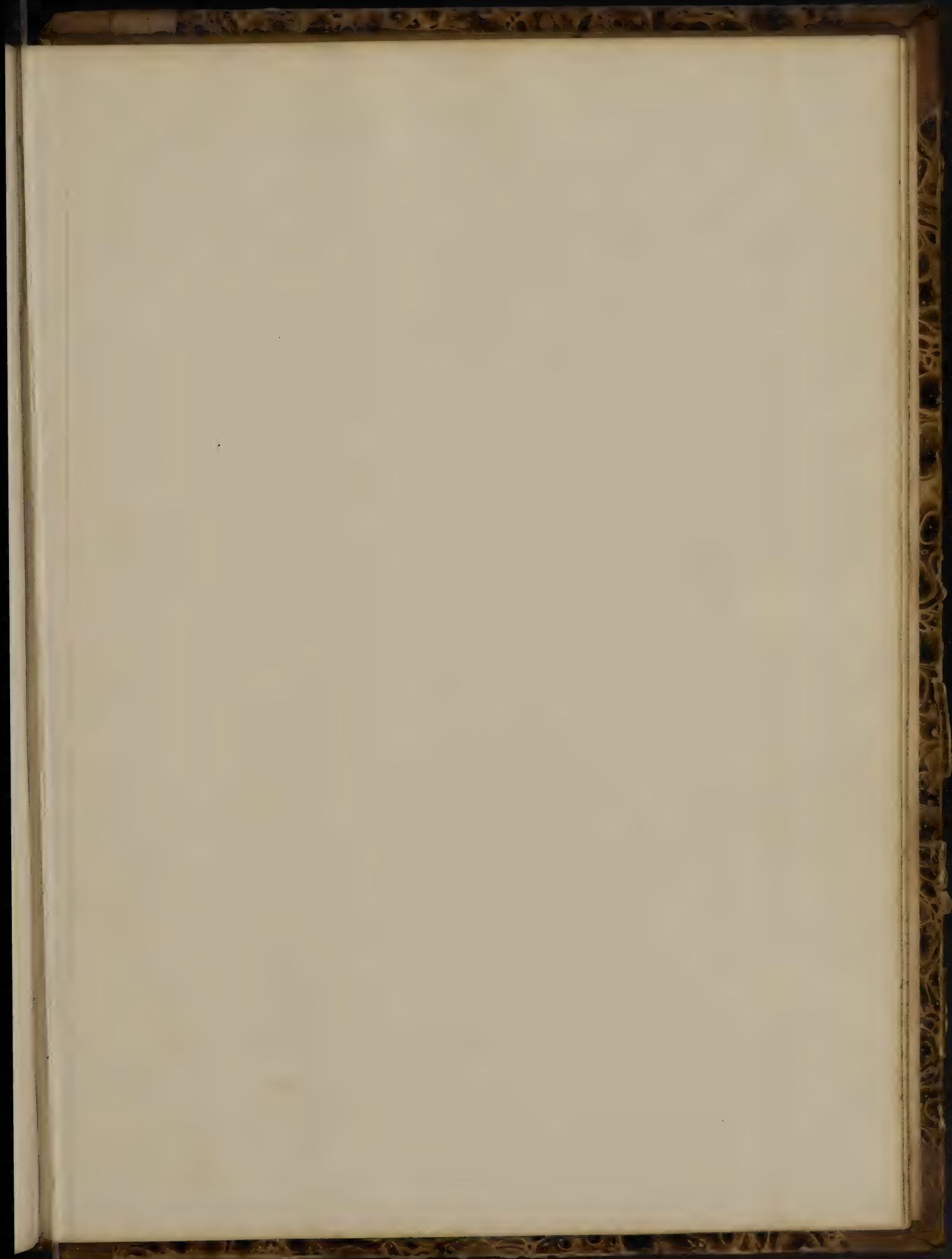


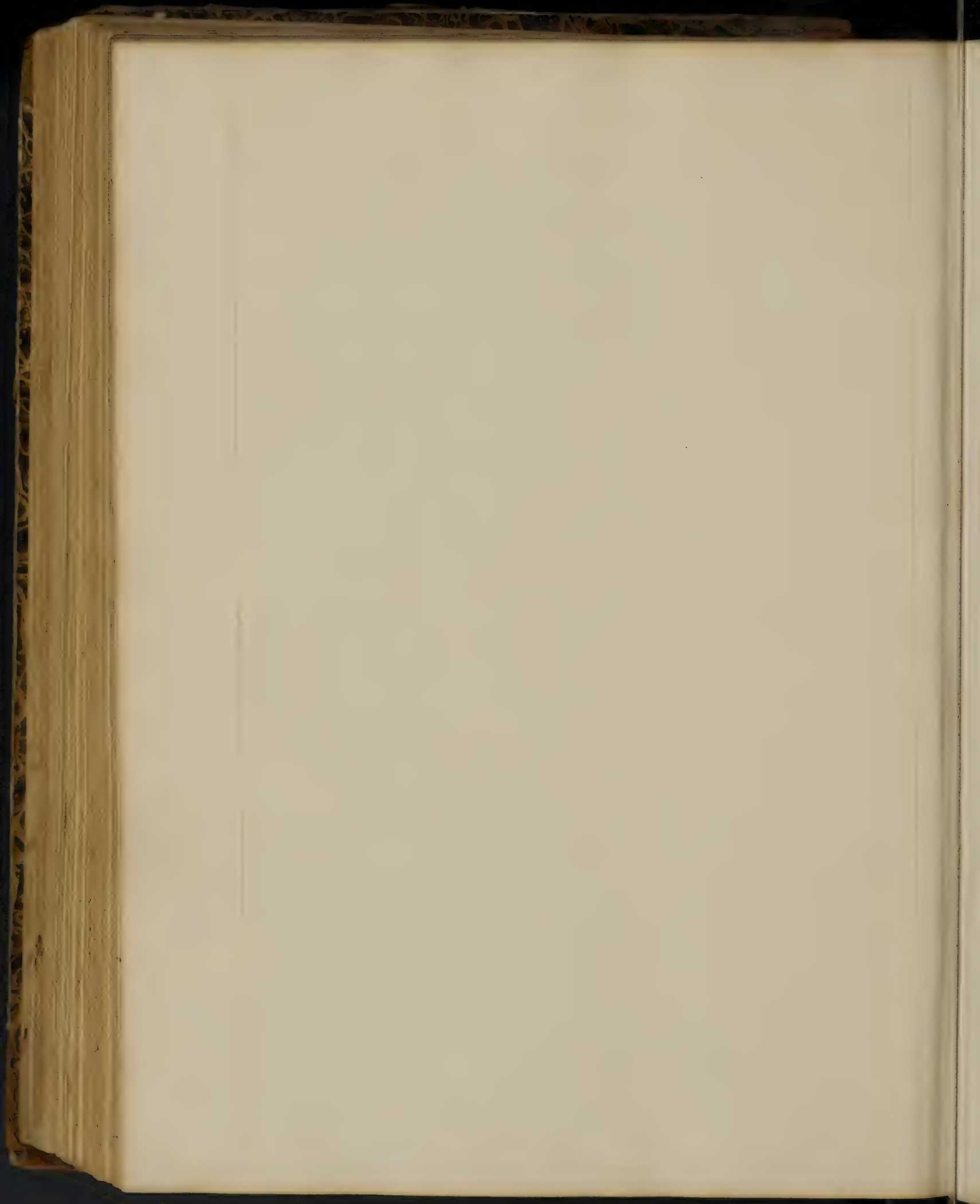


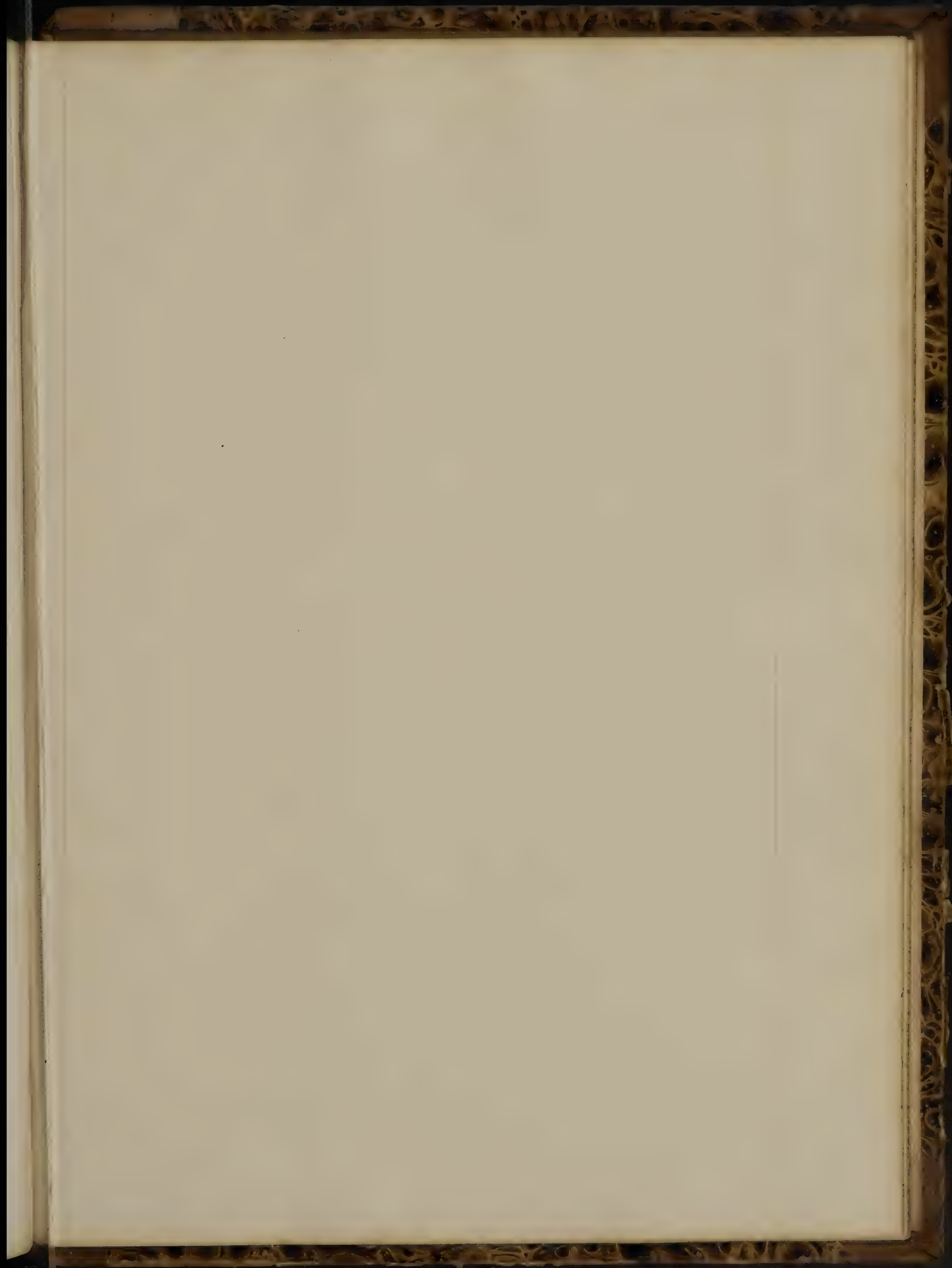


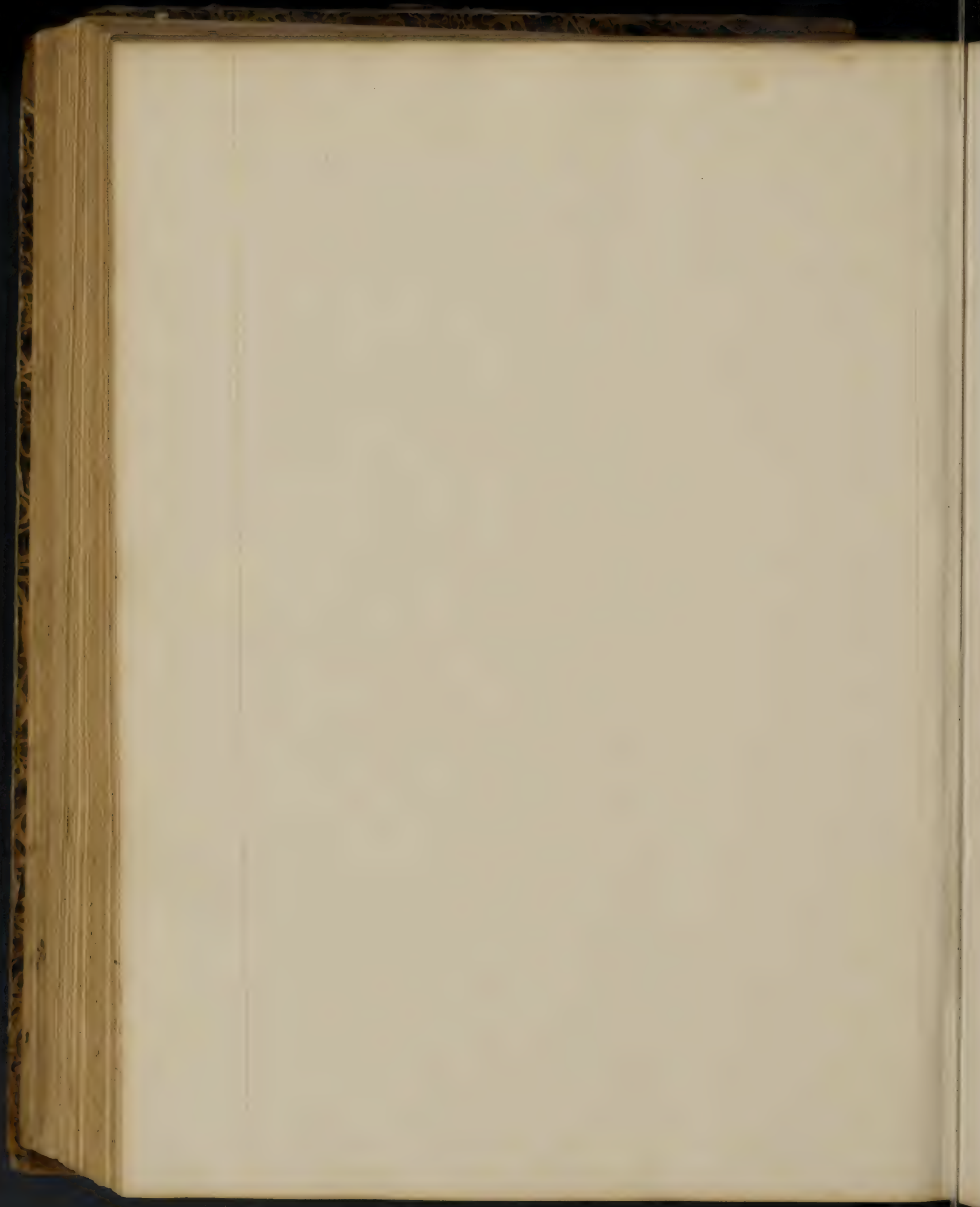


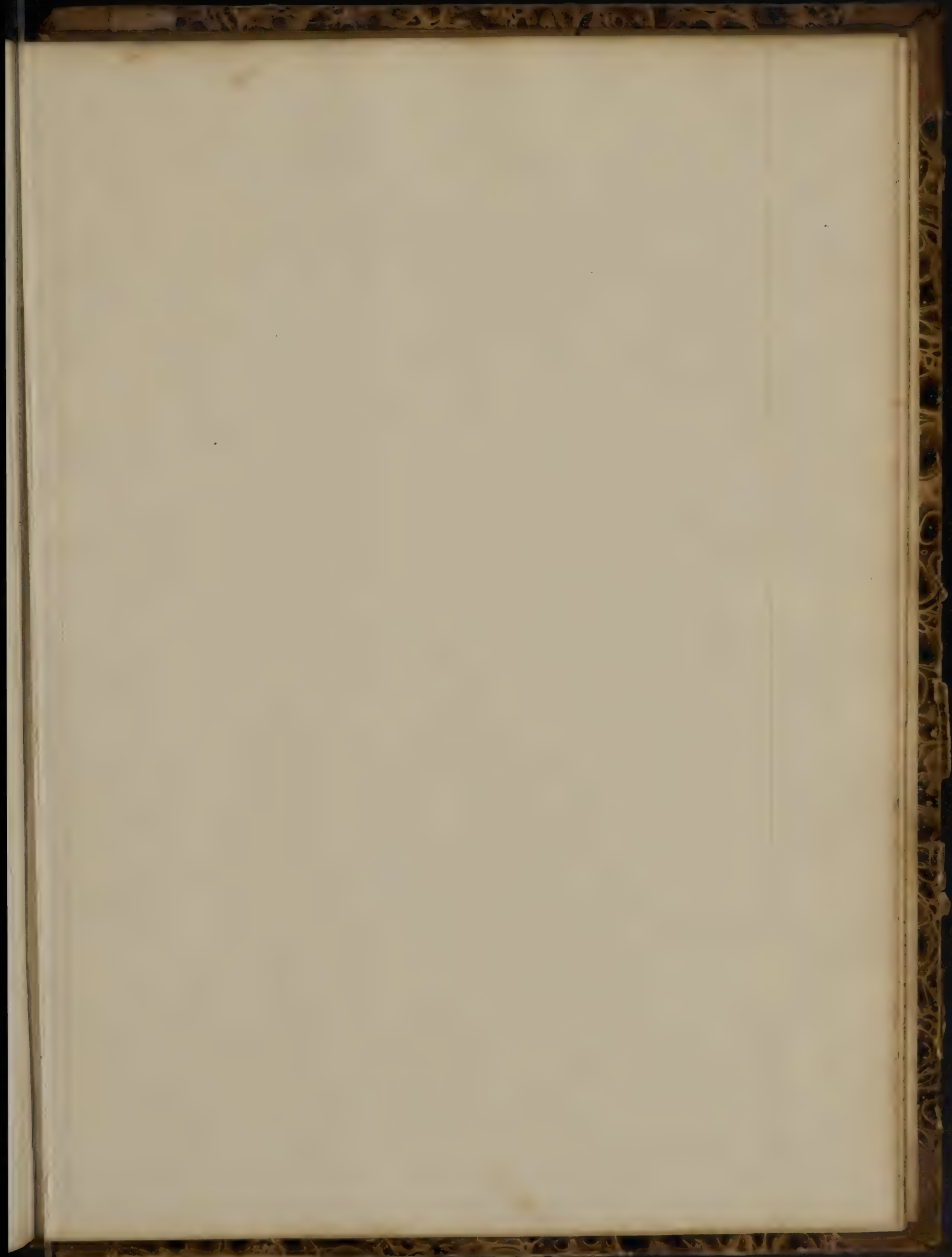


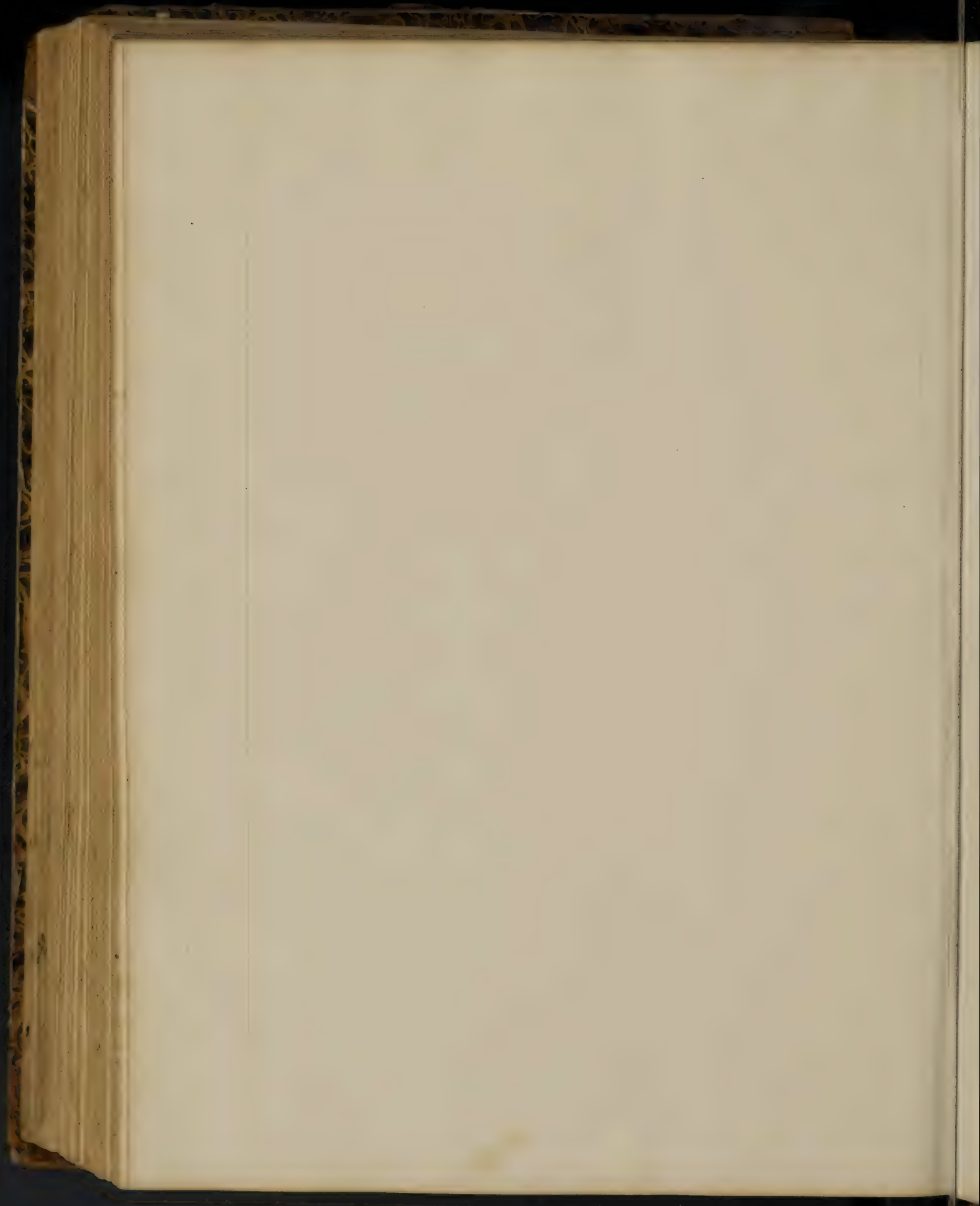


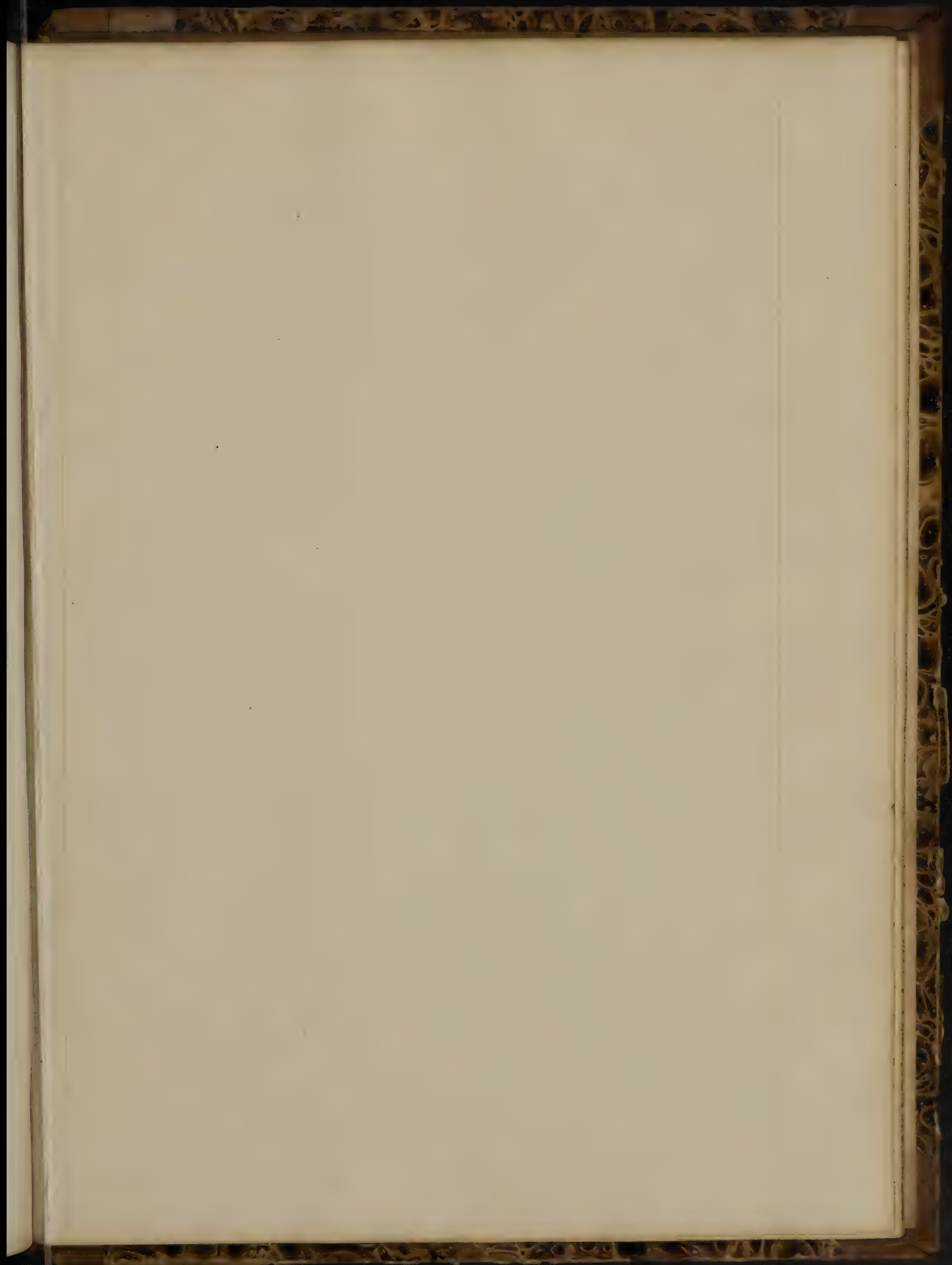


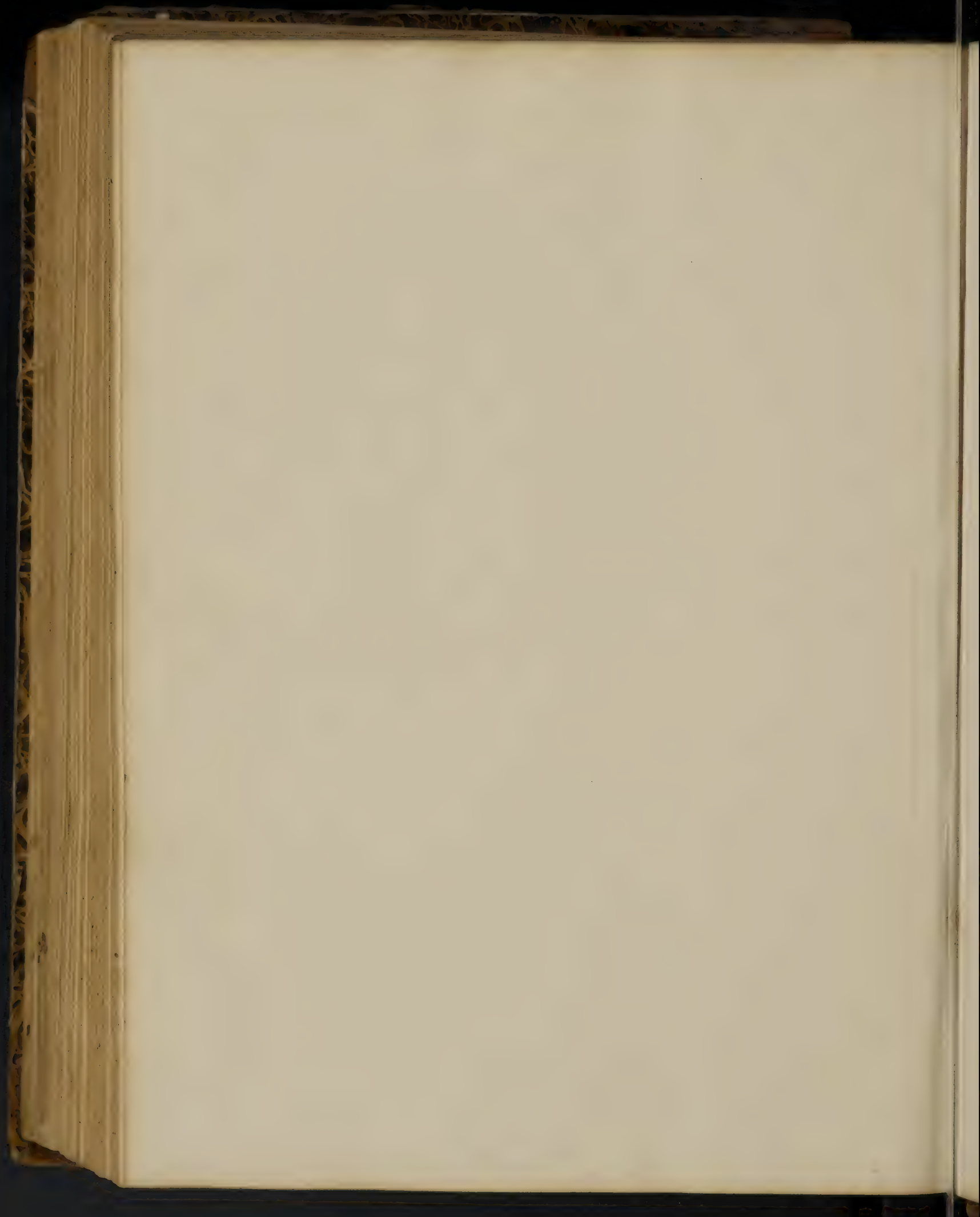


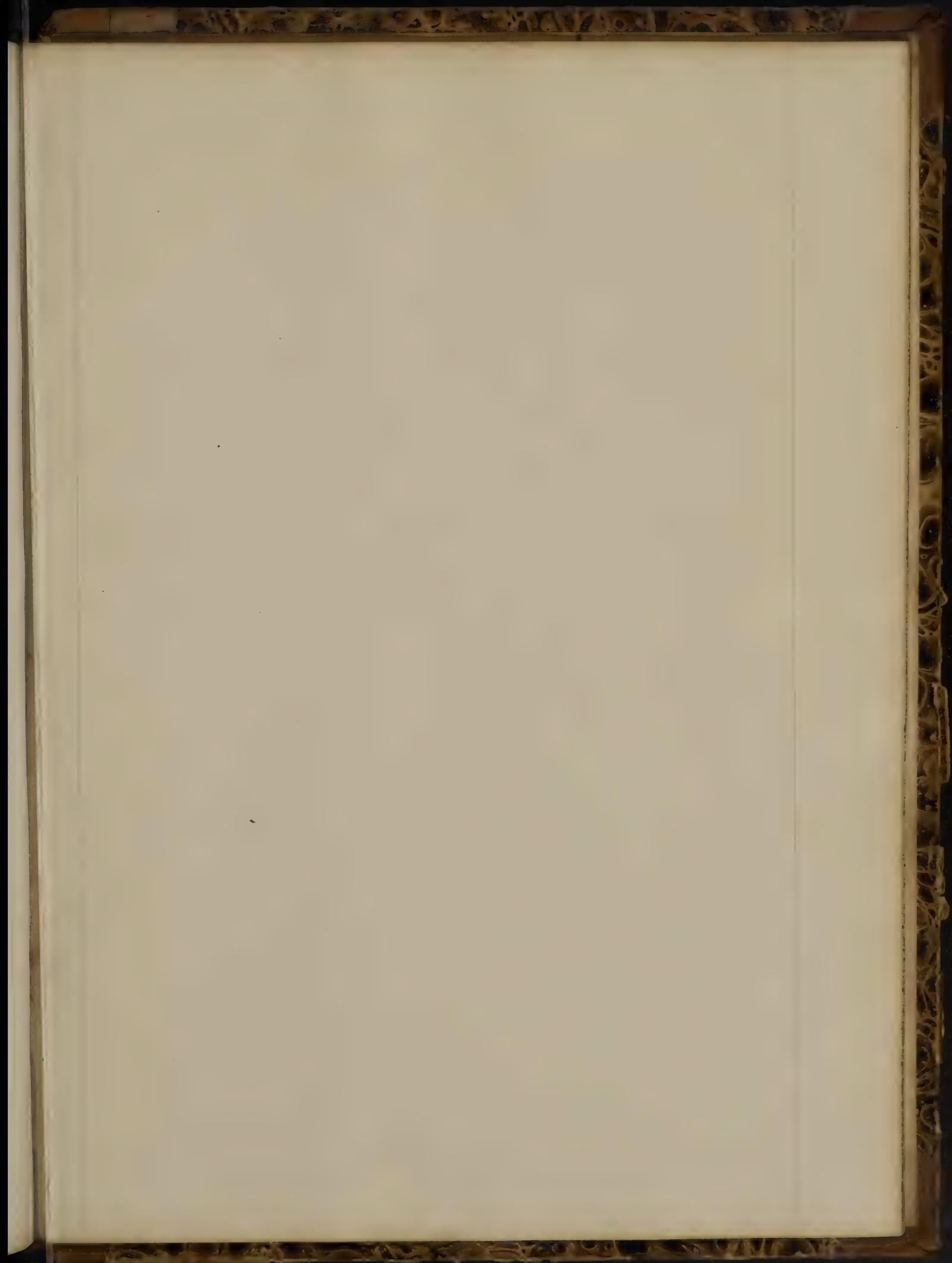


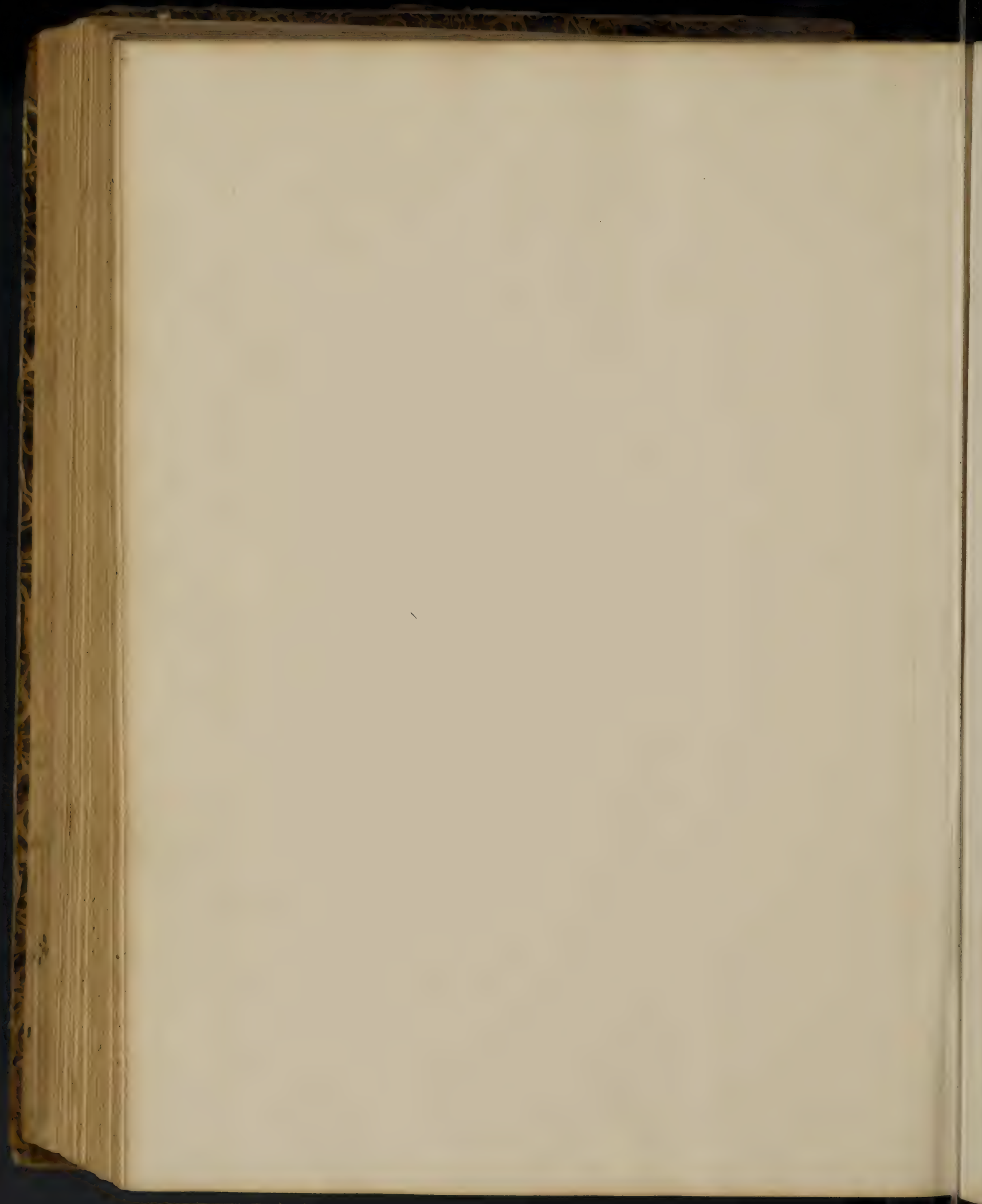


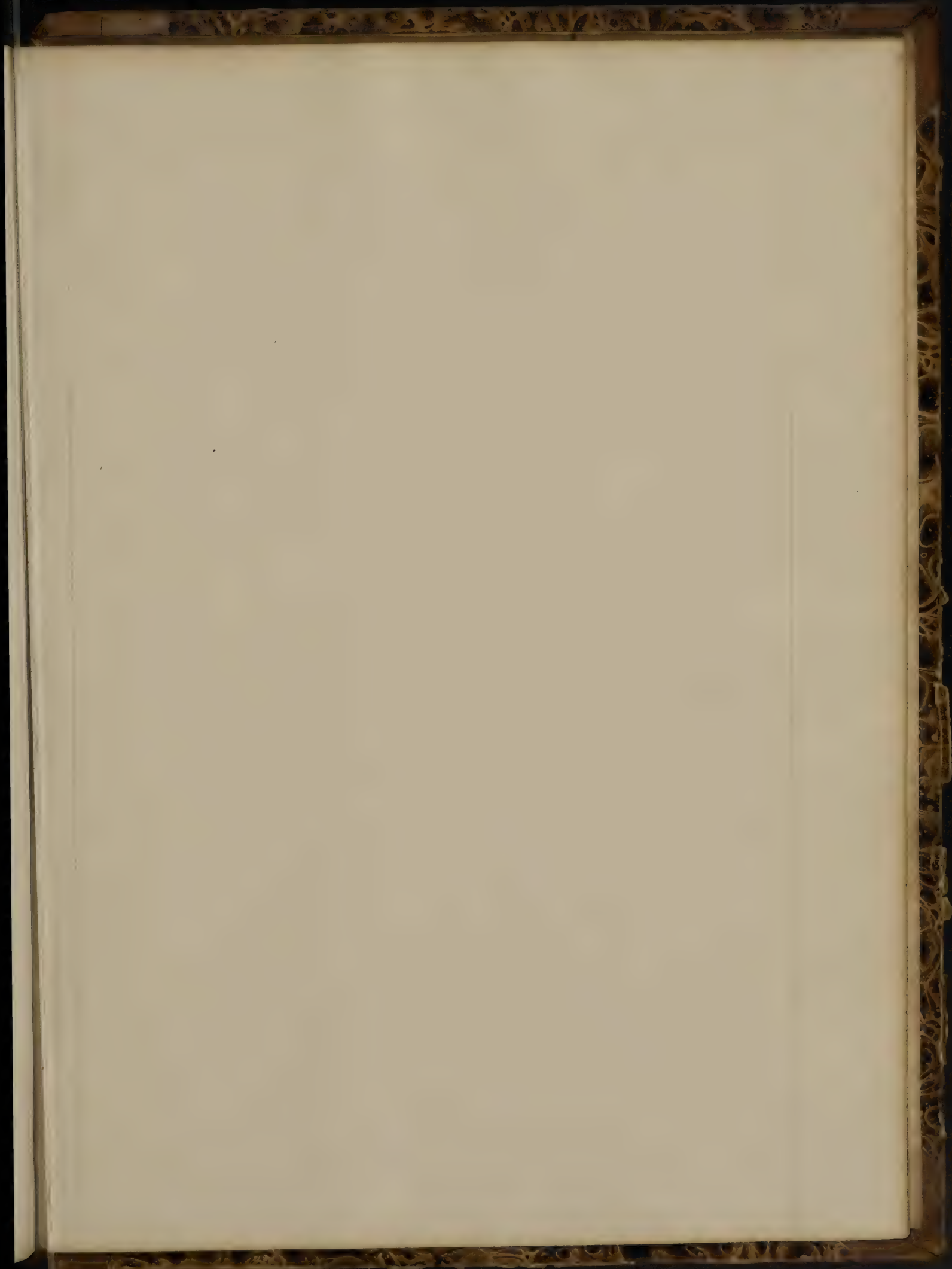


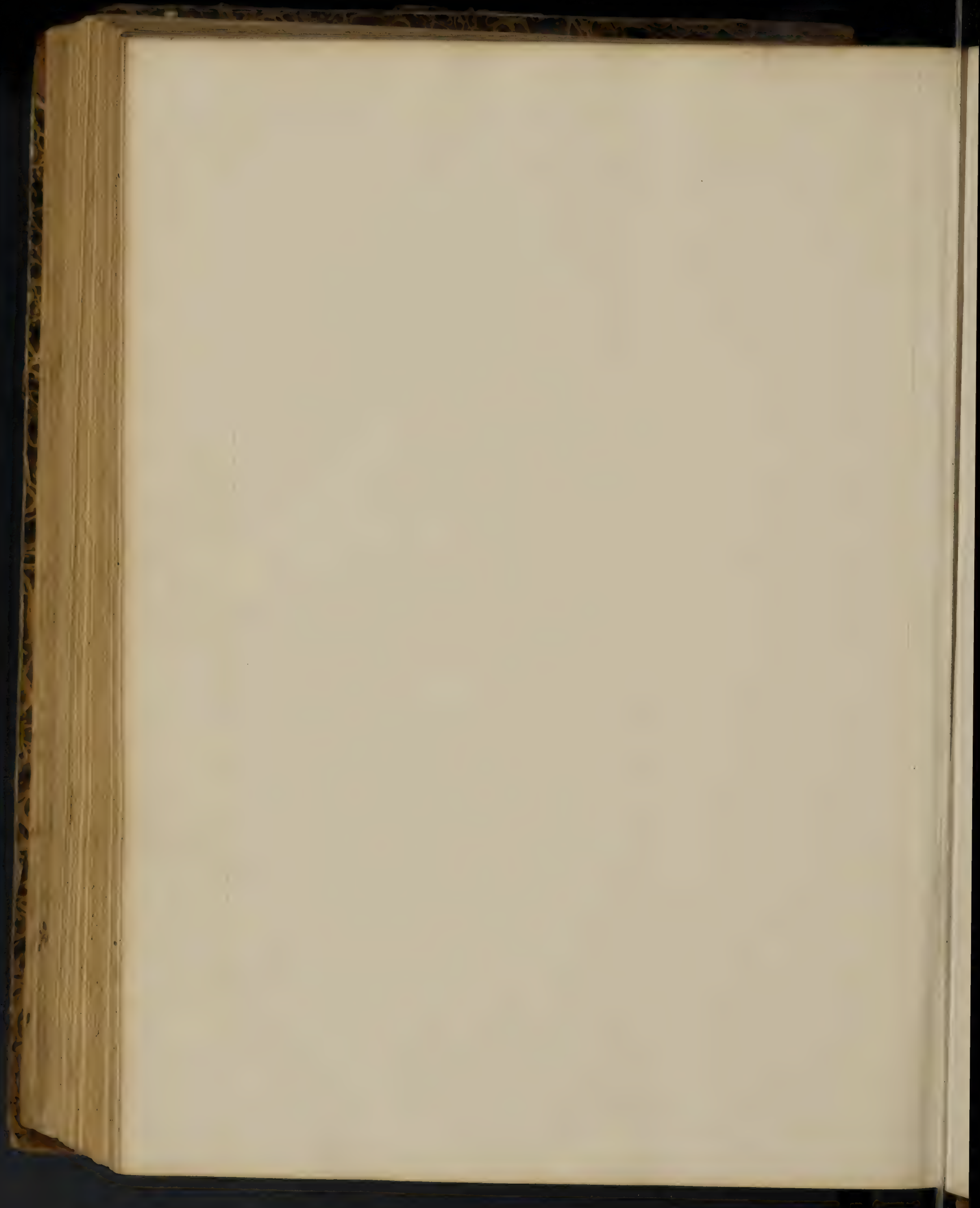


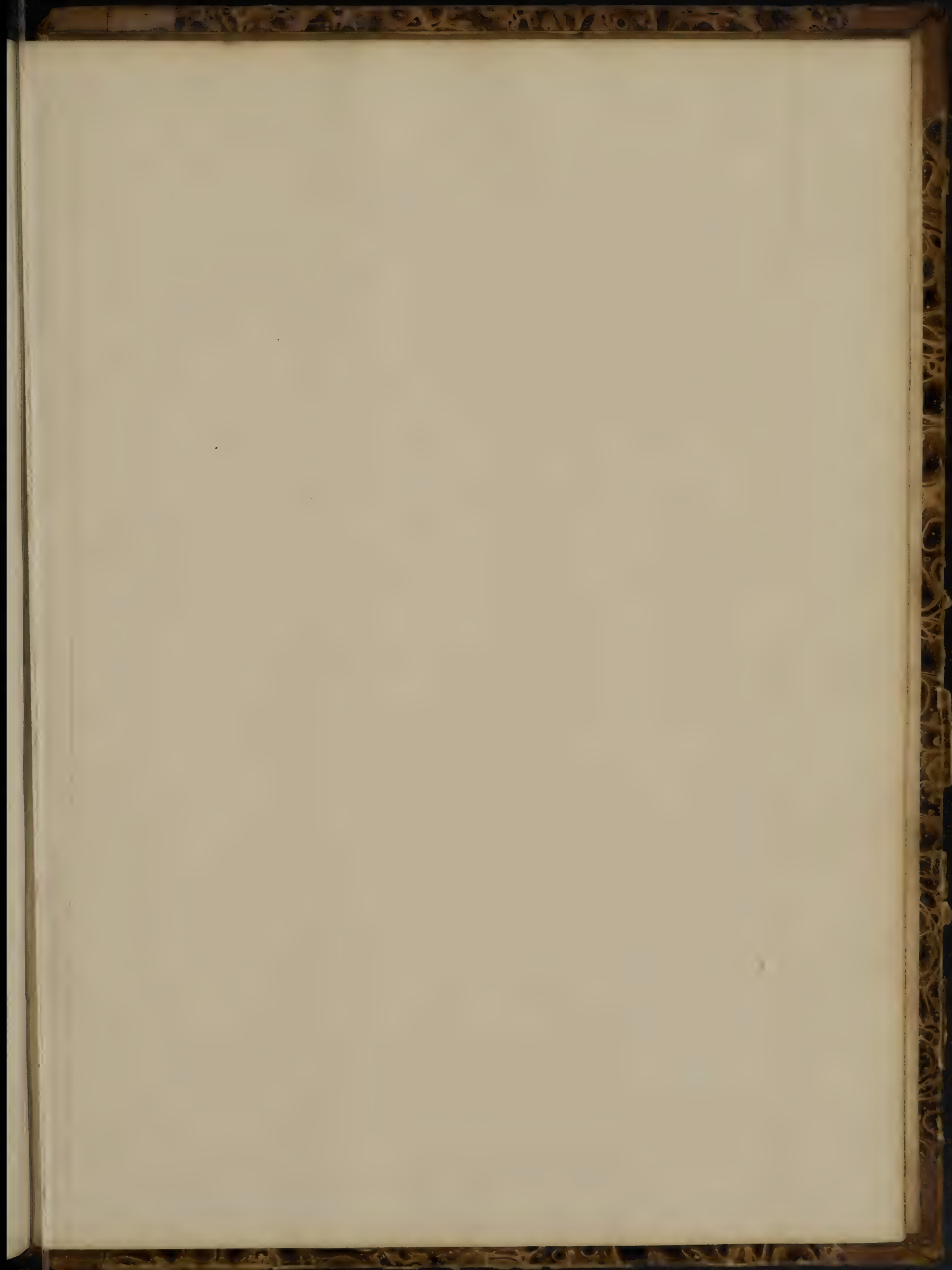


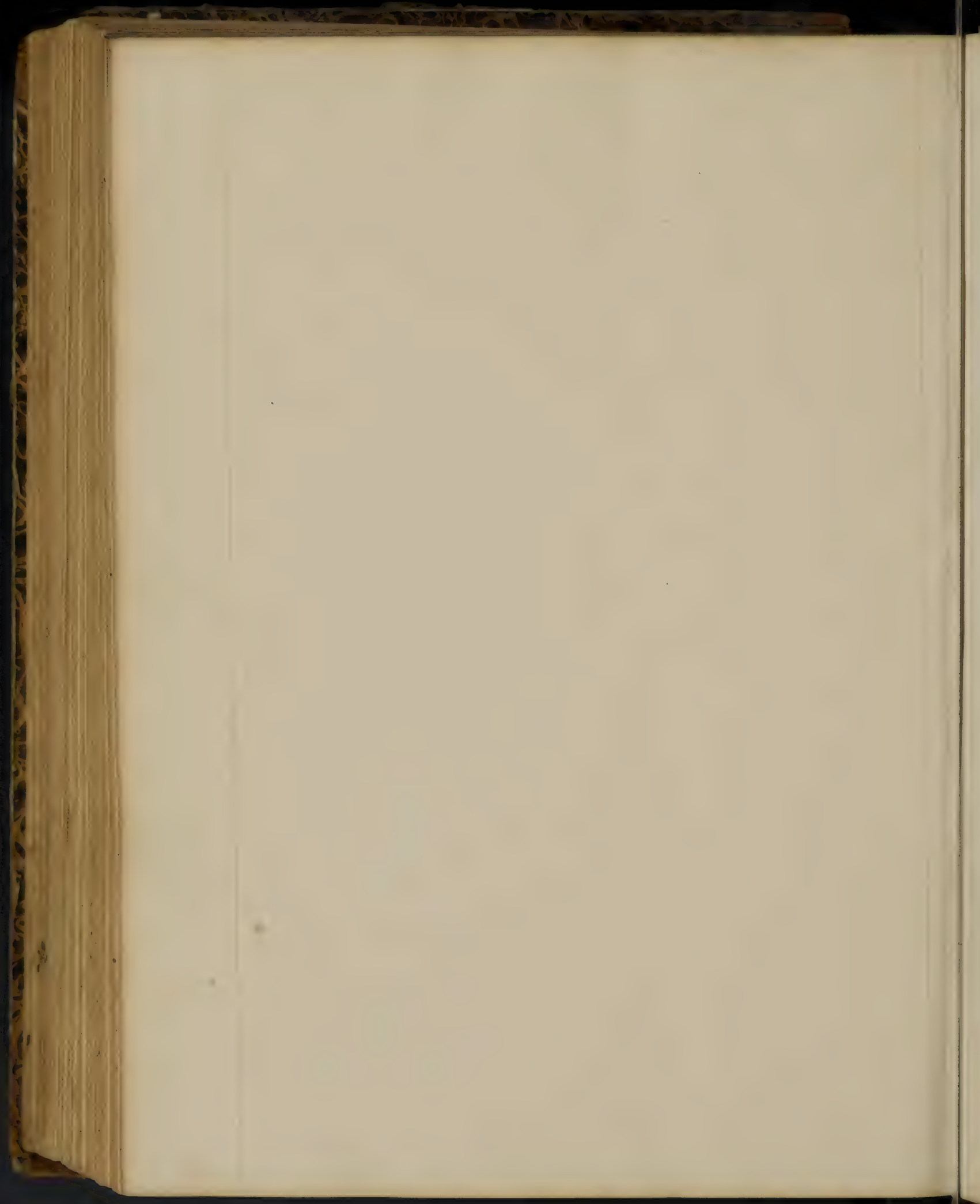


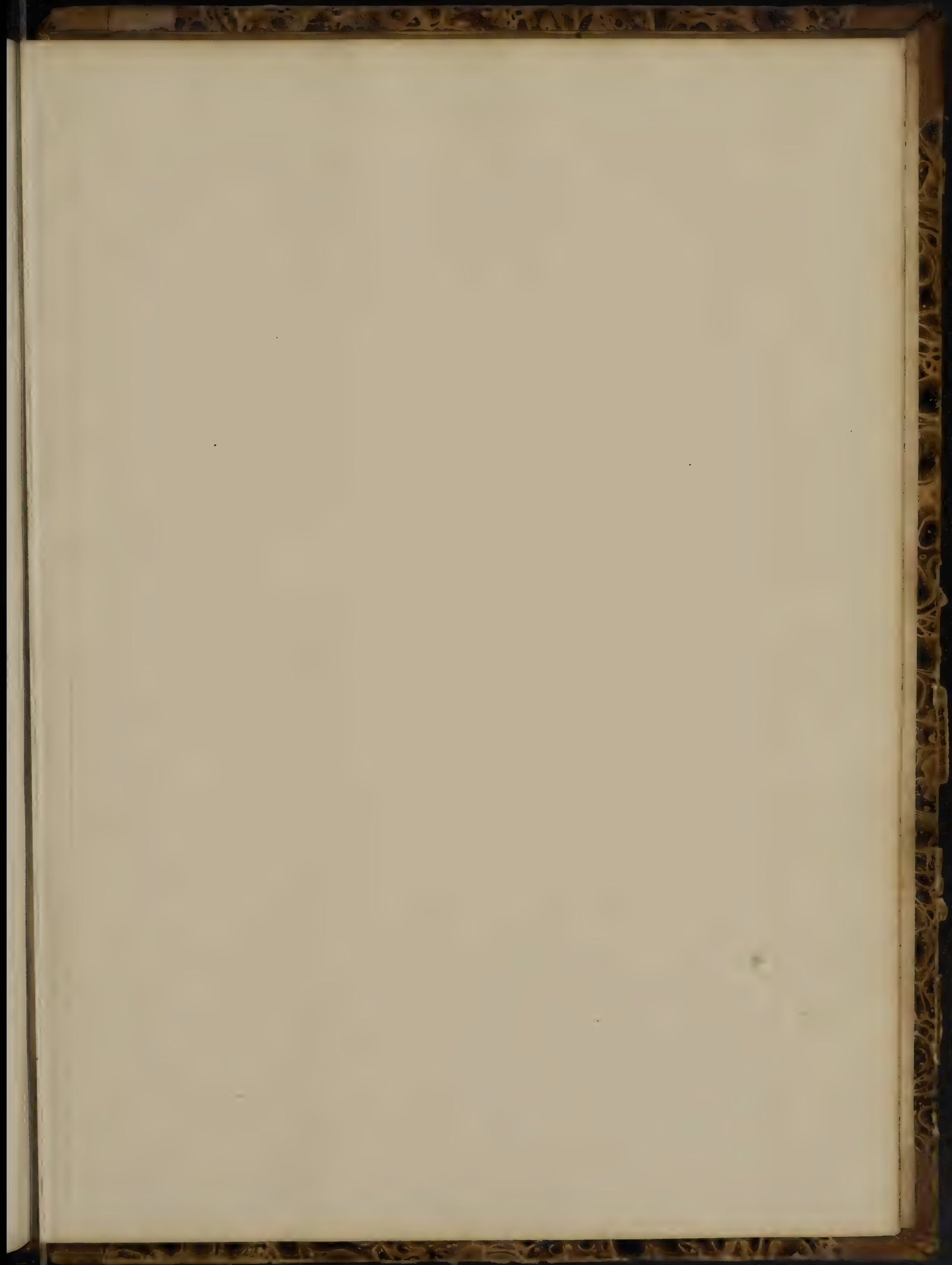


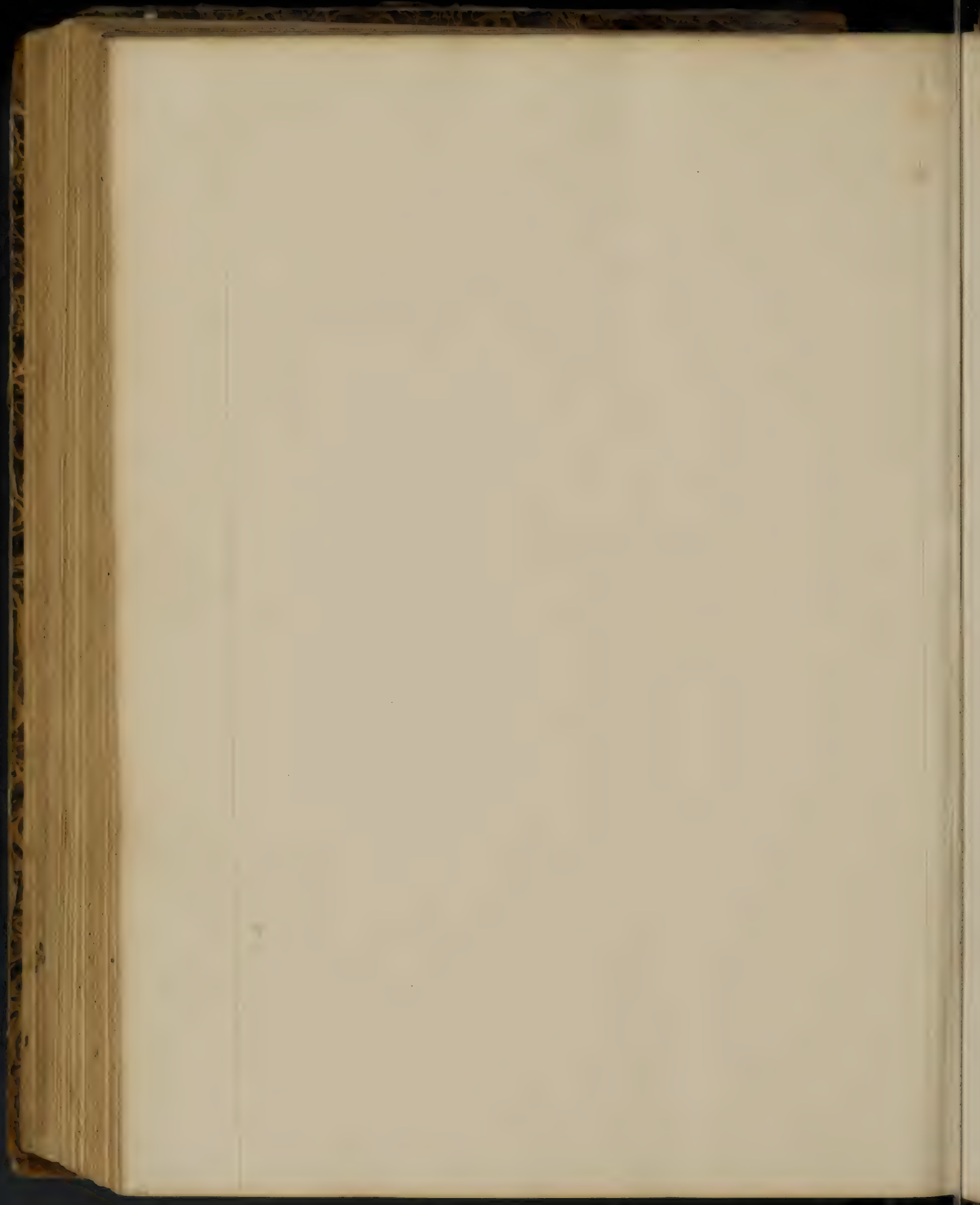


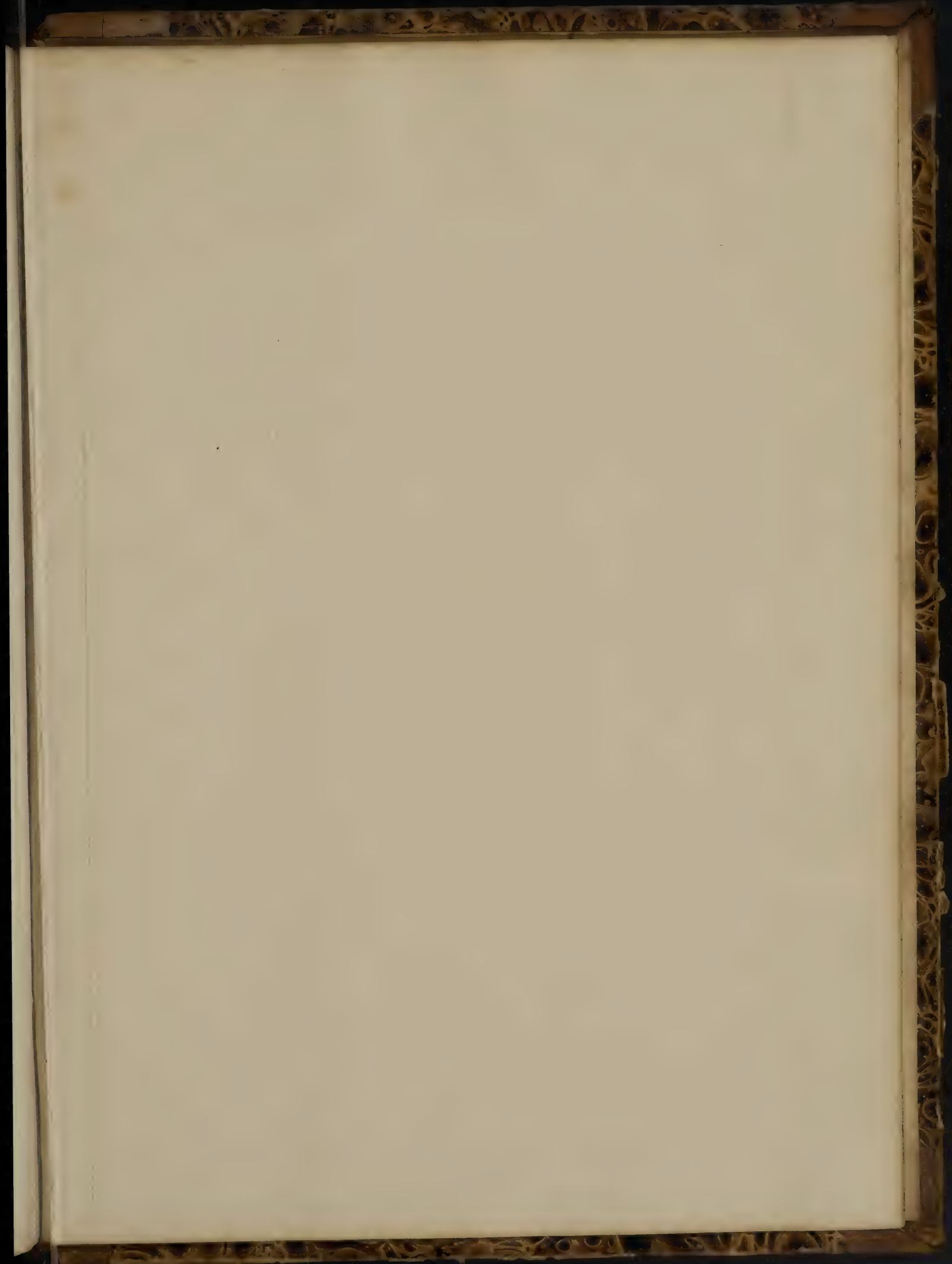


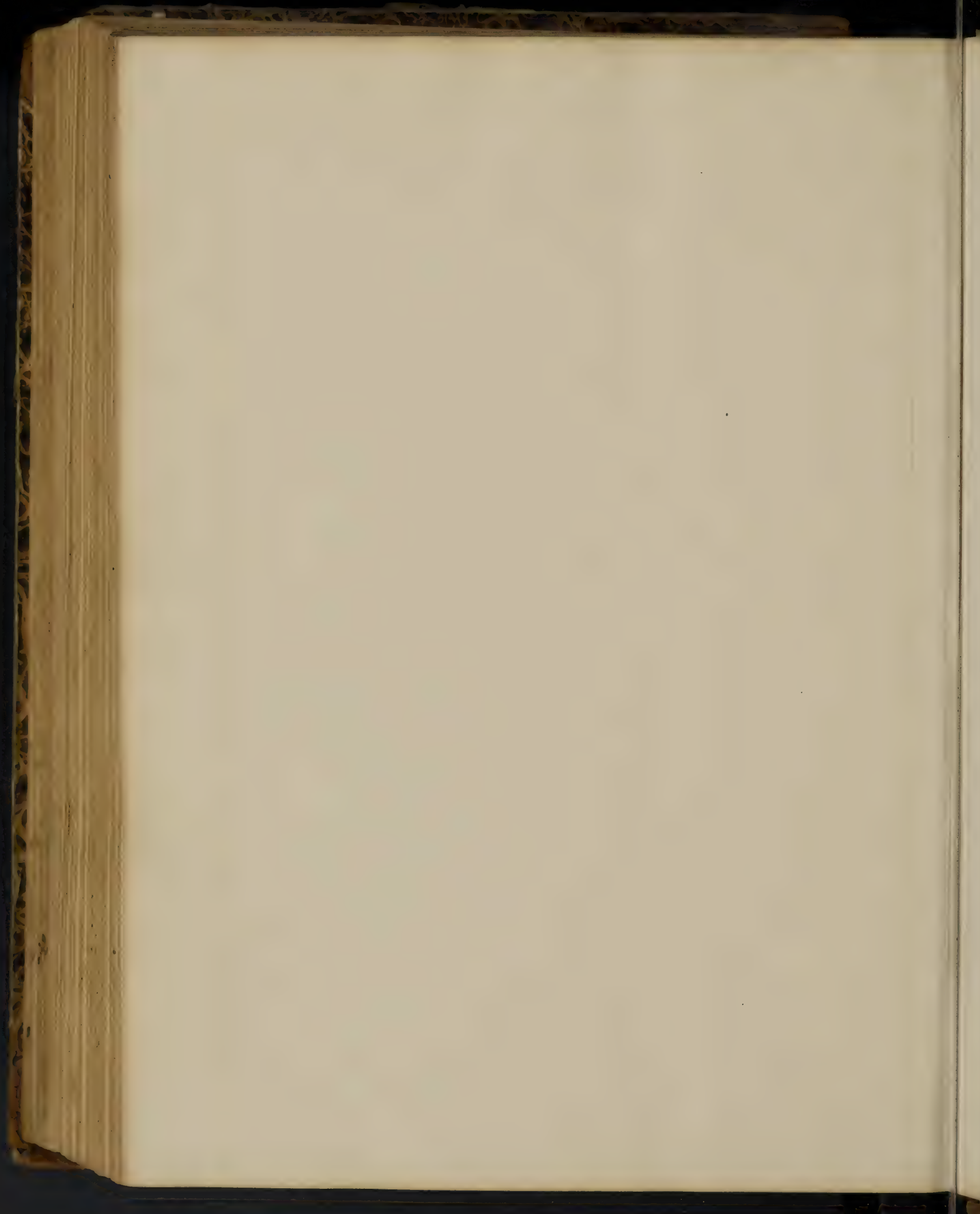


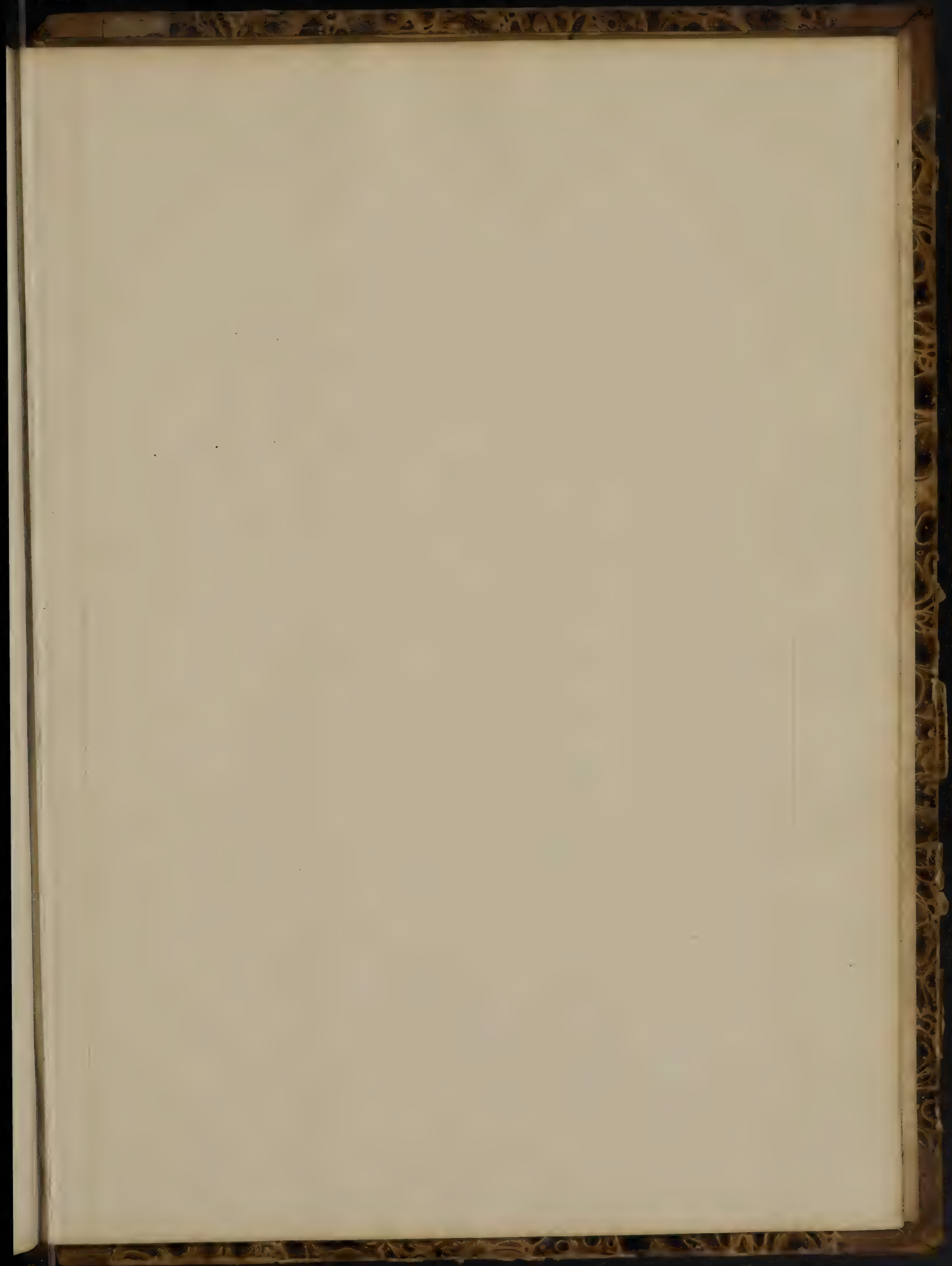


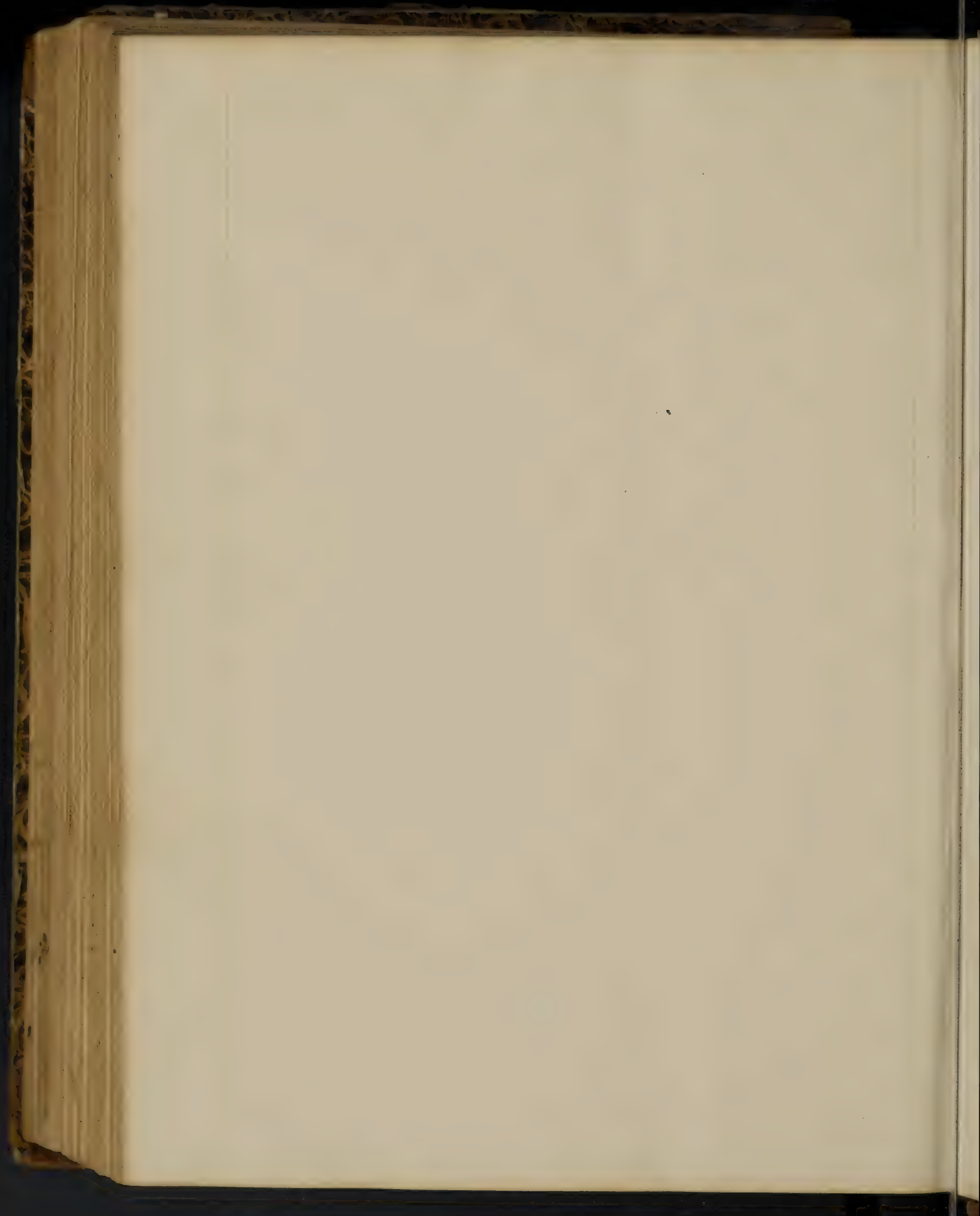


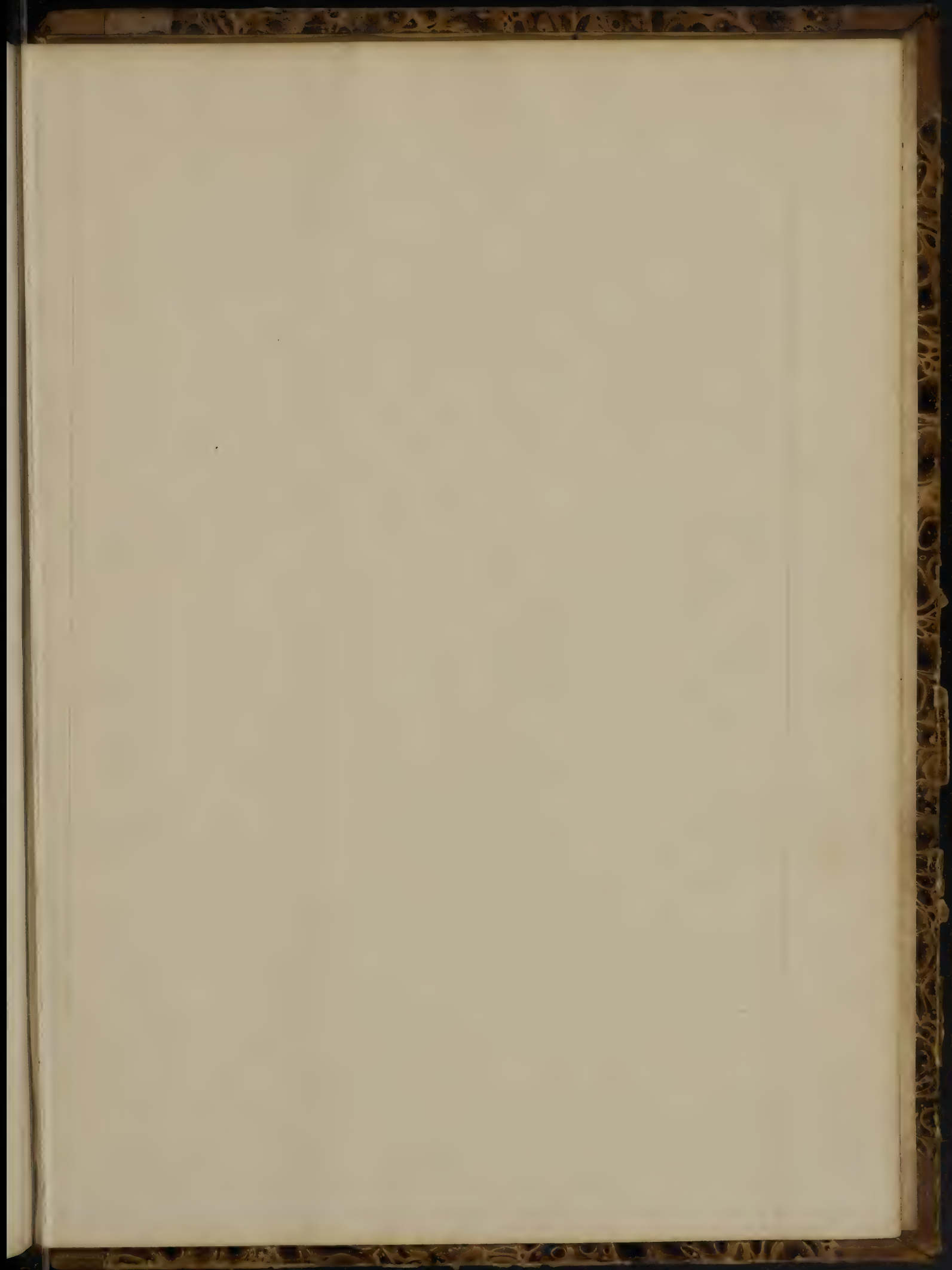


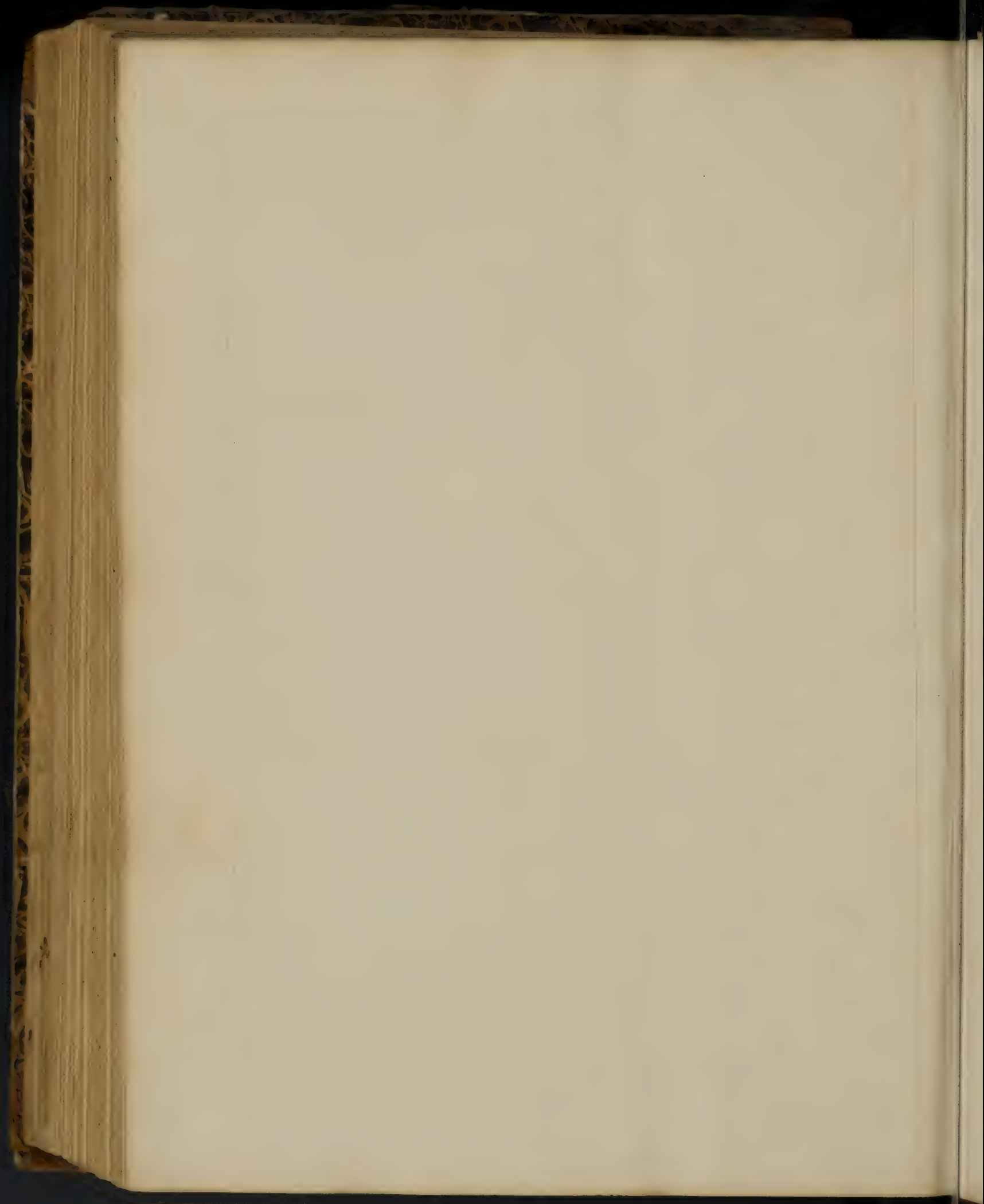


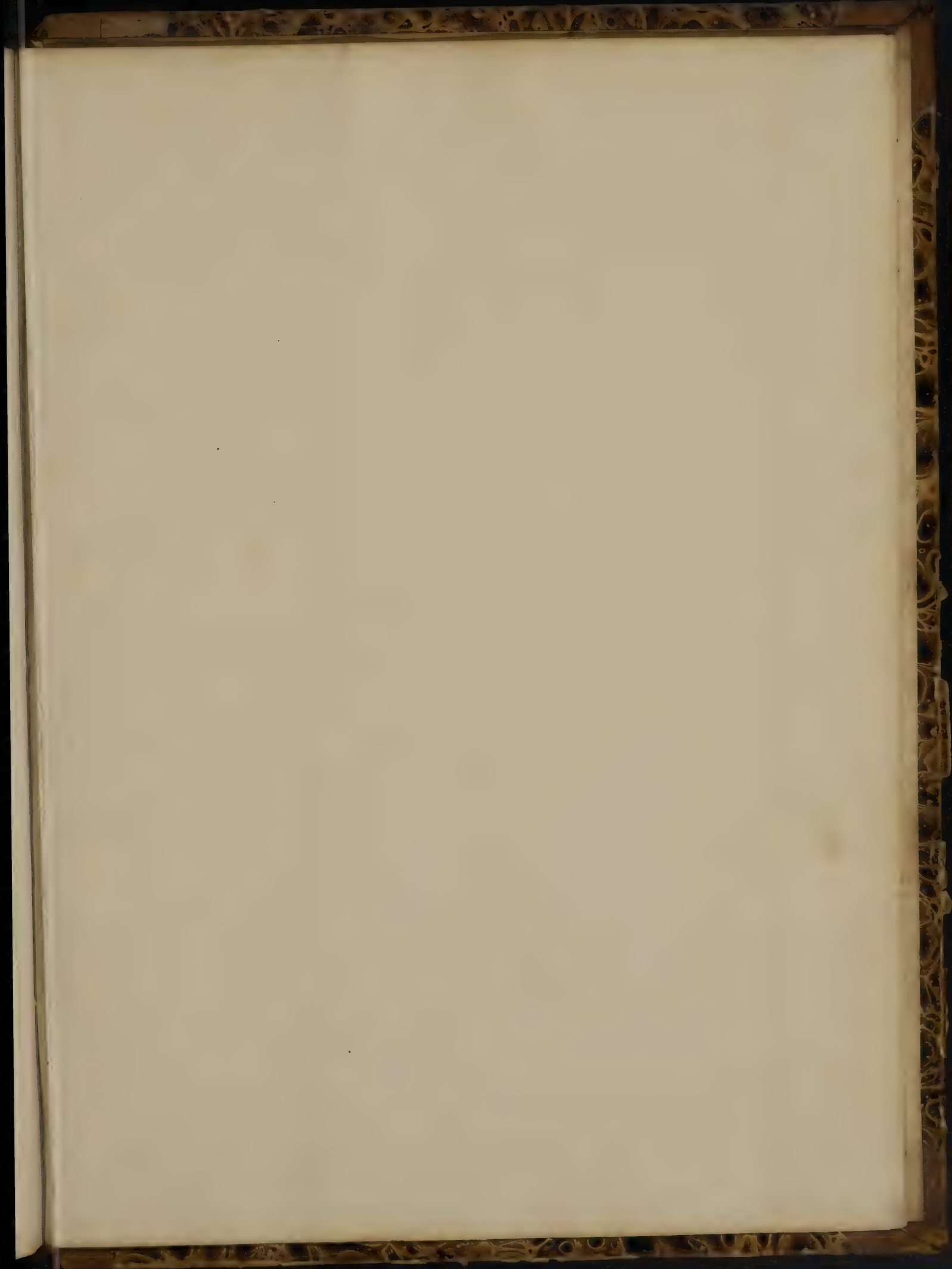


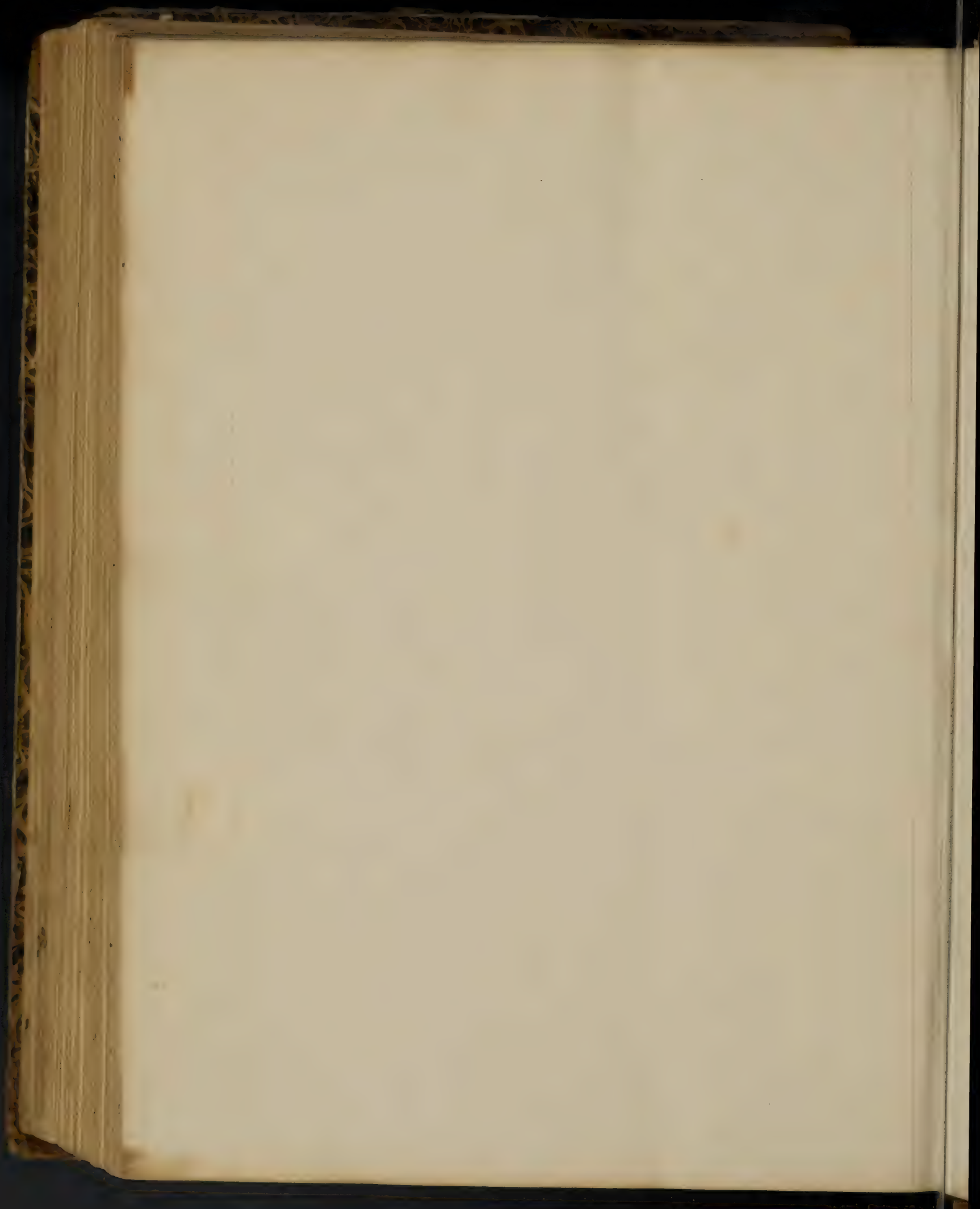


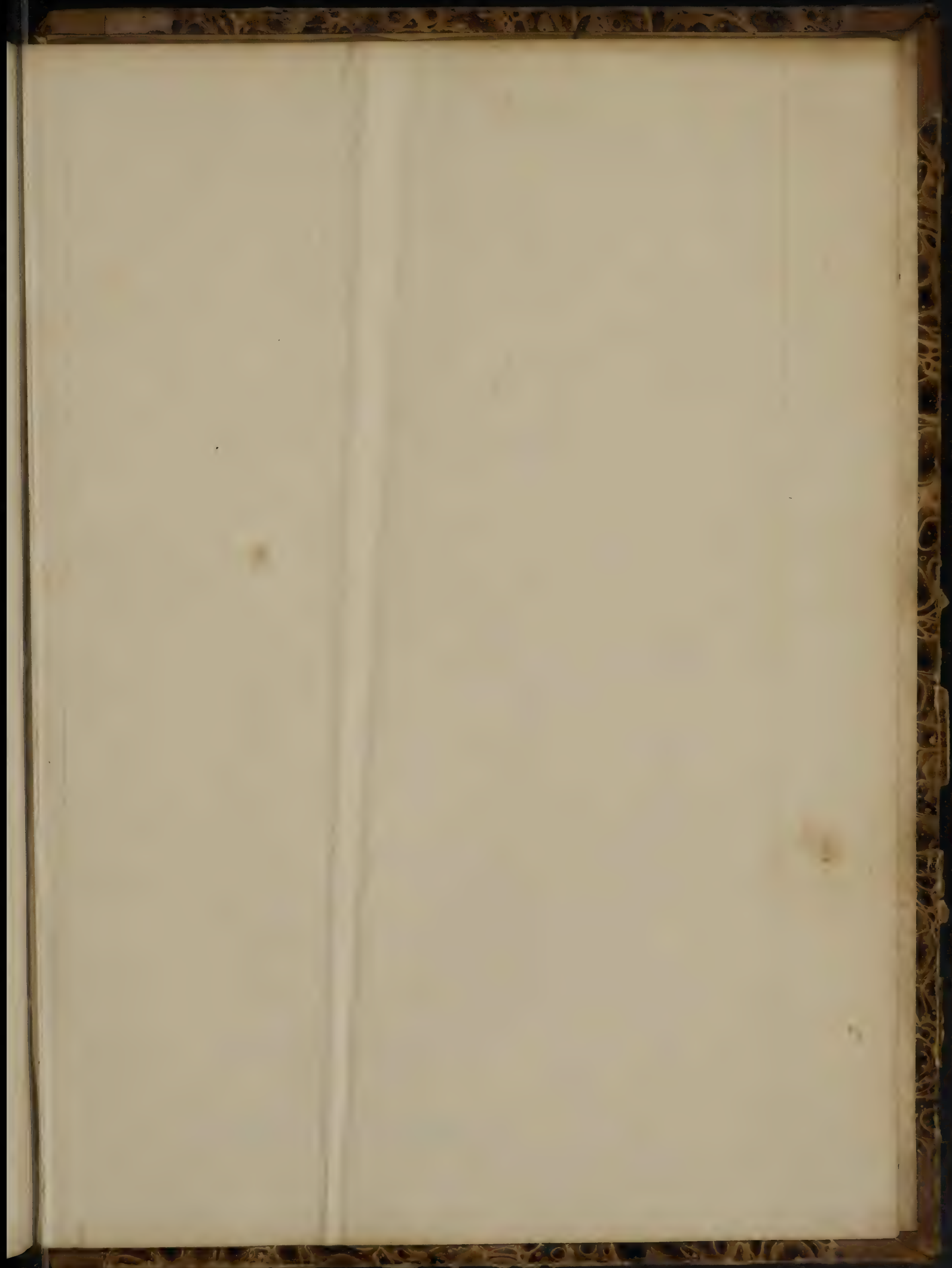


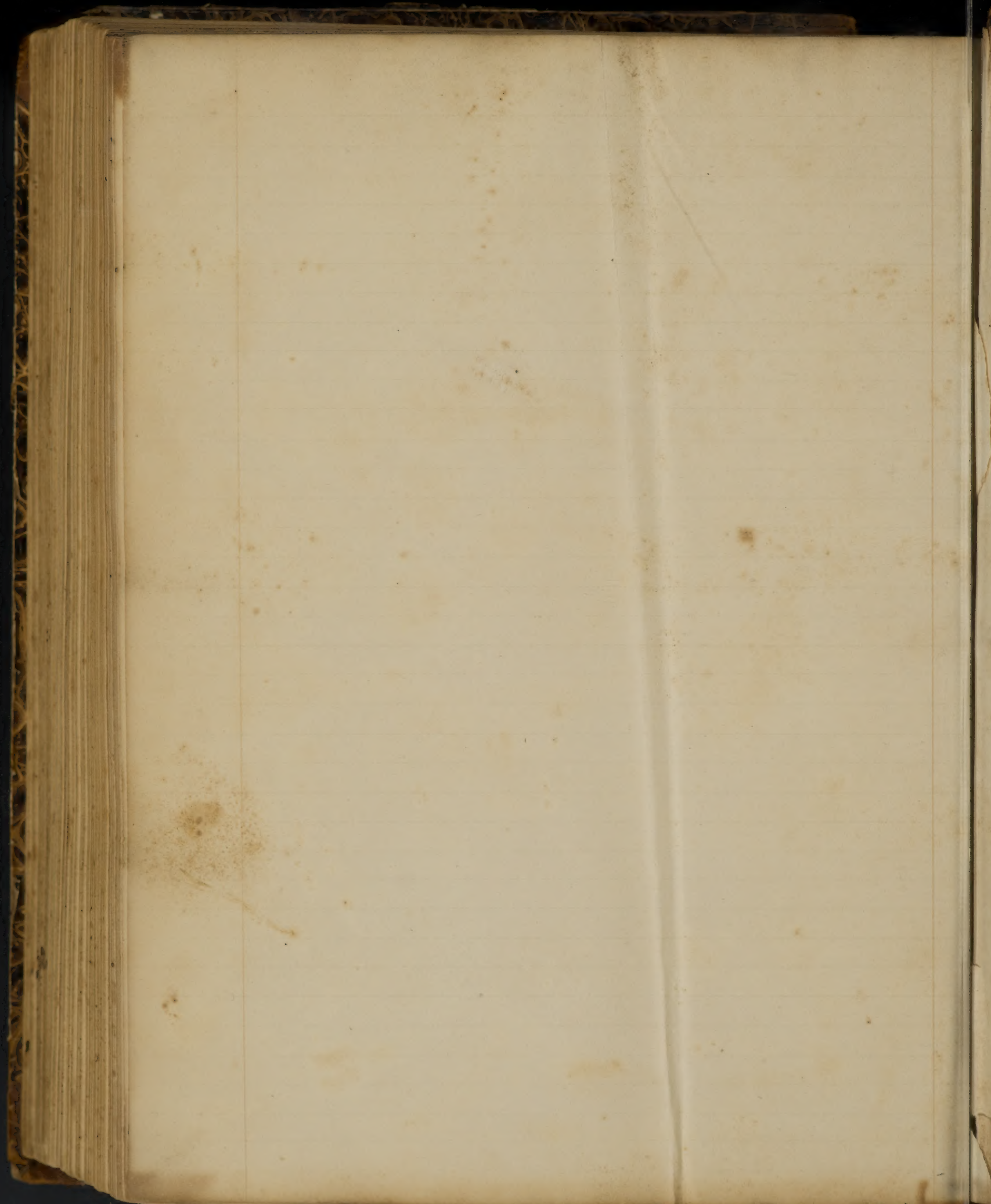












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